United States Court of Appeals

for the Second Circuit

APPENDIX

No. 75-4218

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

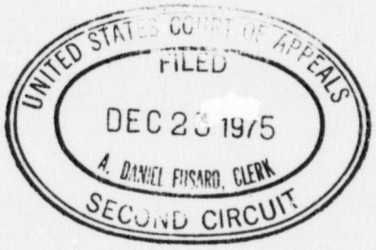
MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

B
P/S

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

ABS DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-5537

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INDEX

APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

DAIRYMEN'S LEAGUE COOPERATIVE ASSOCIATION, INC.

and

RICHARD W. ROSEN

and

MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Party to the Contract

CASE NO. 2-CA-12850

MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (DAIRYMEN'S LEAGUE COOPERATIVE ASSOCIATION, INC.)

and

RICHARD W. ROSEN

and

BORDEN'S INC., AND VARIOUS OTHER EMPLOYERS, NAMED IN APPENDIX "A" ATTACHED HERETO

Parties in Interest

CASE NO. 2-CB-5271

- - - - - - - - - - - - -

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Milk Drivers & Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Case Nos.: 2-CA-12850
2-CB-5271

1. 9.73	Charge filed in Case No. 2-CB-5271
1.10.73	Charge filed in Case No. 2-CA-12850
9.11.73	Amended Charge filed in Case No. 2-CB-5271
9.19.73	Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated
9.24.73	Letter requesting extension of time to Answer, dated
9.26.73	Order Amending Consolidated Complaint, dated
	Order extending time to answer, dated
10. 3.73	Answer of Milk Drivers & Dairy Employees, Local 338, dated
10. 4.73	Answer of Dairylea Cooperative, Inc., dated
10.25.73	Letter requesting postponement, dated
10.29.73	Order rescheduling Hearing, dated
11.19.73	Amended Answer of Dairylea Cooperative, Inc., dated
11.26.73	Hearing opened
1. 9.74	Telegram rescheduling postponement of hearing, dated
2. 7.74	Telegram requesting postponement of hearing, dated
2.11.74	Telegram postponing hearing, dated
2.21.74	Hearing closed
2.21.74	Parties' stipulation, dated
2.21.74	Administrative Law Judge's Order transferring case to the Board, dated
2.21.74	Administrative Law Judge's Notice of time in which to file briefs, dated
3.22.74	Board's Order transferring proceeding to Board, dated
8.30.74	Board's Order remanding for further hearing, dated
10.29.74	General Counsel's letter stating that he will amend the consolidated complaint, dated
11.18.74	General Counsel's letter submitting the stipulation to

Administrative Law Judge for his approval, dated

11.18.74 Parties' stipulation, dated

12. 6.74 Respondent Union's Motion to transfer case to the Board, dated

12. 9.74 Administrative Law Judge's Order transferring case to the Board, dated

1.16.75 Board's Order granting General Counsel's Motion to enter into evidence stipulation of November 18, 1974, as its Exhibit 17 and vacating its Order remanding for further hearing, dated

7.29.75 Board's Decision and Order, dated

GENERAL COUNSEL'S EXHIBIT 1(g)

[September 19, 1973]

* * * * *

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

It having been charged before the National Labor Relations Board, herein called the Board, in Case No. 2-CA-12850 by Richard W. Rosen, that Dairymen's League Cooperative Association, Inc., herein called the Company, and in Case No. 2-CB-5271 by Richard W. Rosen, that Milk Drivers & Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union have engaged in, and are engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act; and having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs of delay:

IT HEREBY IS ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations — Series 8, that these cases be, and they hereby are,

consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations – Series 8, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 2-CA-12850 was filed by Richard W. Rosen on January 9, 1973, and served by registered mail upon the Company, on or about January 10, 1973 and upon the Union and the parties in interest listed in Appendix "A" hereto on or about September 19, 1973.

(b) The Charge in Case No. 2-CB-5271 was filed by Richard W. Rosen on January 9, 1973, and served by registered mail upon the Union and the Company on or about January 10, 1973.

(c) The First Amended Charge in Case No. 2-CB-5271 was filed by Richard W. Rosen on September 11, 1973, and served by registered mail upon the Union on or about September 11, 1972 and upon the Company and the parties in interest listed in Appendix "A" hereto on or about September 19, 1973.

2. (a) The Company is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, the Company has maintained an office and place of business in Blauvelt, Rockland County, in the State of New York, herein called the Blauvelt plant, and various other places of business in the States of New York, New Jersey, and Pennsylvania, where it is, and has been at all times material herein, engaged in the processing, sale and distribution of milk and related dairy products.

(c) At all times material herein, each of the parties in interest listed in Appendix "A" hereto have maintained places of business in the State of

New York where each has been engaged in the processing, sale and distribution of milk and related dairy products.

(d) During the past year which period is representative of its annual operations generally, the Company in the course and conduct of its business operations, processed, sold and distributed at its places of business, products valued in excess of $50,000 of which products valued in excess of $50,000 were shipped from said places of business in interstate commerce directly to states of the United States other than the state in which it is located.

(e) During the past year which period is representative of their annual operations generally, each of the parties in interest, in the course and conduct of their respective business operations, manufactured, sold and distributed at their places of business products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from said places of business in interstate commerce directly to states of the United States other than the state in which each is located.

3. (a) The Company is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

(b) The parties in interest listed in Appendix "A" hereto, and each of them, are and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. Howard Rosengrandt is, and has been at all times material herein, the steward, for the Union at the Blauvelt plant, acting on its behalf, and an agent thereof.

6. At all times material herein the Union has been the collective-bargaining representative for certain employees of the Company, including employees

at the Blauvelt plant, as follows:

> Every employee employed in or about a milk distributing branch, pasteurizing plant and garage in the Metropolitan area but excluding branch managers, assistant branch managers, plant superintendents, plant assistant superintendents, all non-working foremen, garage superintendents, garage assistants, garage foremen, supervisors of credit and collections, sales supervisors, stores department, canvassers, all clerical help, sanitary inspectors, chief electricians, laboratory technicians.

7. For about the past 20 years several employer associations and various individual employers, including the Company, in the milk industry within the New York Metropolitan Area which covers New York City, the Counties of Westchester, Putnam and Rockland in the state of New York and portions of Fairfield County in the state of Connecticut, have negotiated collective-bargaining agreements as a group under the name the Metropolitan Milk Industry, herein called M.M.I., with the Union. Said group negotiations are hereinafter referred to as the MMI negotiations.

8. (a) As a result of the most recent MWI negotiations described above in paragraph 7, the Union and the various participating employers, including the Company, executed individual identical collective bargaining agreements entitled "Local 338 – Metropolitan Milk Industry Collective-Bargaining Agreement" effective for the period November 30, 1971 to November 30, 1973, herein called the MMI agreement.

(b) At all times material herein, the Company and the Union have been parties to and have maintained in effect and enforced, the aforesaid MMI agreement relating to hire, tenure, terms and conditions of employment of employees of the Company as described above in paragraph 6.

9. The MMI agreement described above in paragraph 8 contains, *inter alia*, the following provisions:

(a) " 6. The general rules, seniority rules, vacation rules regarding the Pension and Welfare Program to be in effect during the term of this agreement are set forth in Schedules "B", "C", "D", "E", and "F", respectively, attached hereto and made a part hereof."

(b) " 9. (a) There shall be a Steward or Stewards, but not more than one for each craft per shift, at every Delivery Branch, Pasteurizing Plant, and Garage to see whether the members of the Union and the Employer live up to the provisions of this agreement and the rules of the Union, not inconsistent with this agreement, and to report any infraction of such provisions and rules to the Superintendent who shall promptly correct them. Such Steward or Stewards shall be selected by the Union and each shall be an employee of the place in which he is Steward."

(c) "(b) The Steward shall be considered the Senior employee in the craft in which he is employed, and if there is more than one Steward, seniority, as between the Stewards shall be based on their Company seniority. The Superintendent or Branch Manager shall recognize the Steward as a representative of the Union locally, . . ."

(d) The various work rules referred to in schedules "B", "C", and "D" of the MMI Agreement as incorporated in Article 6 thereof, recited above in subparagraph (a) contain, *inter alia,* provisions for the assignment of overtime in order of seniority (schedule B); the filling of, and bidding for, new route assignments and various other positions and the selection of shifts, hours, days-off, transfers and promotions in order of seniority (Schedule C) and; choice of vacation schedules in order of seniority (Schedule D).

(e) By virtue of Article 9(b) and Schedules "B", "C", and "D" of the MMI agreement, described above in subparagraphs (c) and (d), the Company and the Union have granted, and accorded to, the Union steward a first preference, or priority, over other employees with respect to terms and conditions of employment dependent or conditioned upon, or related to, seniority ranking, and thereby gave, and are giving, inferior ranking or status to all other employees covered by the aforesaid collective-bargaining agreement thus adversely affecting the terms and conditions of employment of said employees.

10. (a) At all times material herein, Howard Rosengrandt, the Union steward at the Company's Blauvelt plant, was not the most senior route-man in terms of actual length of service.

(b) At all times material herein, the aforesaid Howard Rosengrandt, by virtue of his position as Union steward and in accord with the provisions of the MMI Agreement described above in paragraph 9, was considered by the Union and the Company as the most senior route-man and treated as such by them.

(c) On or about January 10, 1973 the aforesaid Howard Rosengrandt, as a direct consequence of his greater seniority over other unit employees as described above in subparagraphs (a) and (b), was awarded a change in his route assignment to which other unit employees had greater claim based upon seniority measured by length of service, thereby adversely affecting the terms and conditions of employment of said employees.

11. (a) At all times material herein, and more particularly beginning with six months prior to the filing and service of the charge upon the Union, the Union and the various employers listed in appendix "A" hereto have been parties to, and have maintained in effect and enforced, collective-bargaining agreements, including the MMI agreement described above in paragraphs 7 and 8(a), relating to hire, tenure, terms and conditions of employment of employees

of the respective aforesaid employers.

(b) The collective-bargaining agreements described above in subparagraph (a) contain, *inter alia*, provisions relating to the seniority ranking of Union stewards which are indential or substantially similar to the provisions of the MMI agreement described above in subparagraphs 9(a), (b), (c) and (d).

(c) By virtue of the aforesaid collective bargaining agreements, the Union has caused and is causing Union stewards employed at the employers listed in appendix "A" hereto to enjoy a first preference, or priority, over other employees with respect to terms and conditions of employment dependent or conditioned upon, or related to, seniority ranking, and thereby did cause and is causing an inferior ranking or status to be given to all other employees covered by the respective aforesaid collective-bargaining agreements thus adversely affecting the terms and conditions of employment of said employees.

12. By the acts described above in paragraphs 8, 9 and 10, and by each of said acts, the Company interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

13. By the acts described above in paragraphs 8, 9 and 10, and by each of said acts, the Company discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby encouraging membership in a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

14. By the acts described above in paragraphs 8 through 11, and by each of said acts, the Union restrained and coerced, and is restraining and

coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

15. By the acts described above in paragraphs 8 through 11 and by each of said acts, the Union caused and attempted to cause, and is causing and attempting to cause employers to discriminate against their employees in violation of Section 8(a)(3) of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(2) and Section 2(6) and (7) of the Act.

16. The acts of the Company and the Union described above in paragraphs 8 through 11 occurring in connection with the operations of the Company and the parties in interest listed in appendix "A" hereto, described above in paragraphs 2 and 3, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 31st day of October 1973, at 11:00 a.m., at 26 Federal Plaza, 36th Floor, in the City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondents shall each file with the Regional Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Consolidated Complaint within ten (10) days from the service thereof, and that unless it each does so all of the allegations in the Consolidated Com-

plaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases is attached.

Dated at New York, New York this 19th day of September 1973.

/s/ Sidney Danielson
Sidney Danielson, Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

APPENDIX "A"

Borden's Inc., 11 Brown House Road, Stamford, Conn. 06902

Crowley's Milk Company, Inc. 88 Millwood Road, Millwood, New York 10546

Dairymen's League Cooperative Assoc., Inc. Nanuet, New York 10954

Dellwood Dairy Co., Inc. 170 Saw Mill River Road, Yonkers, New York 10701

Dellwood Dairy Co., Inc. 177 Lake Street, White Plains, N.Y. 10708

Eastchester Dairy 210 Marbledale Road, Tuckhoe, N.Y. 10707

Maplegrove Dairy 60 West Main St., Nyack, N.Y. 10960

Kuritzky's Dairy, Inc. Route 202, Peekskill, N.Y. 10566

Smith's Dairy, Inc. 4 Winchester St. White Plains, N.Y. 10708

Sunnybrae Farms 37 Grove St., Mount Vernon, N.Y. 10550

L.H. Brooks P.O. Box 244, Millwood, N.Y. 10546

Fitchett Brothers, Creek Road, Poughkeepsie, N.Y. 12601

Fitchett Brenner, Inc. Box 1089, Poughkeepsie, N.Y. 12601

Fitchett Emmandine Dairy, Inc., 152 W. Main St. Wappinger Falls, N.Y. 12590

Dairylea P.O. Box 3353 Poughkeepsie, N.Y. 12603

Dairylea Coop., Inc. Box 89, Goshen, N.Y. 10954

Deltown Foods, Inc., Fraser, N.Y. 13753

Dairylea Cooperative, Inc., 2-12 Jackson St., Binghamton, N.Y. 13903

Crowley's Milk Co. Inc., 145 Conklin Avenue, Binghamton, N.Y. 13903

Crowley's Milk Co., Inc., LaFargeville, N.Y. 13656

FORM NLRB-4668
(9-72)

(C CASES)

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Associate Chief Administrative Law Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Associate Chief Administrative Law Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring the case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward. with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

FORM NLRB-4338
(5-65)

NATIONAL LABOR RELATIONS BOARD

NOTICE

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

(1) The request must be in writing. An original and two copies must be served on the Regional Director;

(2) Grounds therefor must be set forth *in detail;*

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties *(listed below)*, and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

SEE ATTACHED

GENERAL COUNSEL'S EXHIBIT 1(j)

[September 26, 1973]

* * * * *

ORDER AMENDING CONSOLIDATED COMPLAINT

IT HEREBY IS ORDERED, pursuant to Section 102.15 and 102.17 of the Board's Rules and Regulations, Series 8, as amended, that the Consolidated Complaint herein, dated September 19, 1973, be, and it hereby is, amended by correcting the name of the Employer as it appears in the caption and the opening paragraph by substituting Dairylea Cooperative Inc. for Dairymen's League Cooperative Association, Inc.; by correcting paragraphs 5 and 6 and subparagraphs 2(b) and 10(a) by substituting the word Nanuet for the word Blauvelt; and by correcting the address of Smith's Dairy, Inc. and Fitchett Emmadine Dairy, Inc., in Appendix "A" to read 101 North Lexington Avenue, White Plains, New York 10601 instead of 4 Winchester St., White Plains, New York 10708 and Creek Road, Poughkeepsie, New York 12602 instead of 152 W. Main Street, Wappinger Falls, New York 12590, respectively.

Dated at New York, New York this 26th day of September 1973.

/s/ Sidney Danielson
Sidney Danielson, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

GENERAL COUNSEL'S EXHIBIT 1(n)

[October 3, 1973]

* * * * *

ANSWER OF MILK DRIVERS AND DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA TO THE CONSOLIDATED COMPLAINT AS AMENDED.

Milk Drivers and Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 338") by its attorneys, Cohen, Weiss and Simon, answering the consolidated complaint, as amended states:

1. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraphs 2(a), 2(d), 2(e), 3(a) and 3(b).

2. Denies the allegations of paragraphs 9(e), 10(b), 10(c), 11(c), 12, 13, 14, 15 and 16.

3. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1(a) except admits having received a copy of the charge after September 19, 1973.

4. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1(b) except admits having received a copy of the charge after January 10, 1973.

5. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 1(c) except admits having

received a copy of the amended charge after September 11, 1972 [sic].

6. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 2(b) except admits that the Company has maintained offices and places of business in Nanuet, New York and at other locations in the State of New York where it has been engaged in the processing, sale or distribution of milk or other dairy products.

7. Denies the allegations of paragraph 2(c) but admits that each of the parties in interest has maintained places of business in the State of New York where each has been engaged in the processing, sale or distribution of milk or other dairy products.

8. Denies the allegations of paragraph 5 except admits that Rosengrandt has been the steward at the Company's Nanuet, N.Y. facility.

9. Denies the allegations of paragraphs 7, 8, 9(a), 9(b), 9(c) and 9(d) except admits that the Union and various employers, including the Company, are parties to and have maintained collective bargaining agreements effective November 30, 1971 to November 30, 1973 which contain, *inter alia,* provisions set forth in paragraphs 9(a), 9(b), and 9(c), and except admits further that said agreements contain schedules known as schedules "B," "C", and "D" and refers to said schedules for the contents thereof.

10. Denies the allegations of paragraphs 11(a) and 11(b) except admits that the Union and the employers listed in Appendix "A" annexed to the consolidated complaint have been parties to and have maintained collective bargaining agreements which contain, *inter alia,* provisions identical to or substantially similar to the provisions set forth in paragaphs 9(a), 9(b), and 9(c) of the consolidated complaint and, except as herein admitted, refers to said agreements for the contents thereof.

WHEREFORE, Local 338 demands that the consolidated complaint be dismissed as to it.

Dated: New York, N.Y.
October 3, 1973

COHEN, WEISS and SIMON
Attorneys for Local 338
by /s/ Stanley W. Berman
Office and P.O. Address:
605 Third Avenue
New York, N.Y. 10016
(212) 682-6077

GENERAL COUNSEL'S EXHIBIT 1(r)

[November 19, 1973]

* * * * *

ANSWER OF RESPONDENT DAIRYLEA
COOPERATIVE INC. AMENDED

It having been charged before the National Labor Relations Board, herein called the Board, in Case No. 2-CA-12850 by Richard W. Rosen, that Dairylea Cooperative Inc., herein called the Company, and in Case No. 2-CB-5271 by Richard W. Rosen, that Milk Drivers and Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union have engaged in, and are engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, herein called the Act; and a Consolidated Complaint having been issued by Order of Sidney Danielson, Regional Director, National Labor Relations Board, on September 19, 1973, which was amended by Order of Stanley Danielson, Regional Director, National Labor Relations Board, dated September 26, 1973.

Now, therefore, Respondent Dairylea Cooperative Inc. by its lawful attorney, Neil H. Deutsch, Esq., Associate Counsel, Dairylea Cooperative Inc., One Blue Hill Plaza, Pearl River, New York 10965, submits its Answer to the

Consolidated Complaint as follows:

FIRST: Respondent Dairylea Cooperative Inc. admits as true each of the allegations contained in paragraphs 2(a), 2(b) as amended by Order of Sidney Danielson, Regional Director, National Labor Relations Board dated September 26, 1973, 2(d), 3(a), 4, 5, 6, and 10(a) and 10(b) as Amended by Order of Sidney Danielson, Regional Director, National Labor Relations Board, dated September 26, 1973.

SECOND: The allegations contained in Paragraph 1(a) are admitted by Respondent Dairylea Cooperative Inc. except for the allegations concerning service of the Complaint in Case No. 2-CA-12850 upon Milk Drivers & Dairy Employers, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union, which are denied on the basis that Respondent lacks information and knowledge with which to form a belief as to the truth or falsity of such allegations.

THIRD: Respondent Dairylea Cooperative Inc. admits the allegations contained in Paragraph 1(b) to the effect that it was served by registered mail on or about January 10, 1973 with the charge in Case No. 2-CB-5271 but denies the other allegations contained therein for the reason that it lacks sufficient information and knowledge with which to form a belief as to the truth or falsity of such allegations.

FOURTH: Respondent Dairylea Cooperative Inc. admits the allegation contained in Paragraph 1(c) to the effect that it was served by registered mail on or about September 11, 1973 with the First Amended Charge in Case No. 2-CB-5271 but denies the other allegations contained therein for the reason that it lacks sufficient information and knowledge with which to form a belief as to the truth or falsity of the matters therein contained.

FIFTH: Respondent Dairylea Cooperative Inc. admits the allegations contained in Paragraphs 9(e) except it denies that granting a first preference, or

priority, over other employees with respect to terms and conditions of employment dependent upon or conditioned upon, or related to, seniority ranking operates to adversely affect the terms and conditions of employment of such other employees.

SIXTH: Respondent Dairylea Cooperative Inc. admits the allegations contained in Paragraph 10(c) of the Consolidated Complaint except that it denies that granting a change in Howard Rosengrandt's route assignment under the circumstances mentioned therein operated in a way which adversely affected the terms and conditions of employment of his fellow employees having greater seniority and that other employees had greater claim to the route awarded to Howard Rosengrandt.

SEVENTH: Respondent Dairylea Cooperative Inc. denies each of the allegations set forth in paragraphs 12, 13, 14, 15 and 16 of the Consolidated Complaint.

EIGHTH: Respondent Dairylea Cooperative Inc. denies the allegations of paragraph 7, 8(a), 8(b), 9(a), 9(b), 9(c) and 9(d) except admits that the Union and various employers, including the Company, are parties to and have maintained collective bargaining agreements effective November 30, 1971 to November 30, 1973 which contain, *inter alia,* provisions identical to or substantially similar to the provisions set forth in paragraphs 9(a), 9(b), and 9(c), and except admits further that said agreements contain schedules known as schedules "B", "C", and "D" and refers to said schedules for the contents thereof.

NINTH: Respondent Dairylea Cooperative Inc. lacks information and knowledge with which to form a belief as to the allegations contained in paragraphs 2(c), 2(e), 3(b), 11(a), 11(b), 11(c) and, therefore denies such allegations.

WHEREFORE Respondent Dairylea Cooperative Inc. demands the dismissal of the Consolidated Complaint and such other relief as may be deemed appropriate.

Respectfully submitted

DAIRYLEA COOPERATIVE INC.

By /s/ Neil H. Deutsch
Neil H. Deutsch, Esq.
Associate Counsel
Dairylea Cooperative Inc.
(914) 627-3312

GENERAL COUNSEL'S EXHIBIT 2

[February 21, 1974]

* * * * *

STIPULATION

It hereby is stipulated and agreed that:

1) General Counsel will amend its consolidated complaint in the following manner:

a) Paragraph 1(c), line 3 to change the date therein to September 11, 1973, instead of September 11, 1972.

b) Paragraph 2(b) lines 5 and 6 to read "been at all times material herein, engaged in the processing, sale and/or distribution of milk and/or related dairy products," instead of "been at all times material herein, engaged in the processing, sale and distribution of milk and related dairy products."

c) Paragraph 2(c) lines 3 and 4 to read "State of New York where each has been engaged in the processing, sale and/or distribution of milk and/or related products," instead of "State of New York where each has been engaged in the processing sale and distribution of milk and related products."

d) Paragraph 2(d) line 1, change the word "represenative" to "representative."

e) Paragraph 3(a) line 2, change the word "employed" to "employer."

2) Respondent Union and Respondent Company will admit all the allegations contained in Paragraphs 1(a), (b) and (c); 2(c).

3) Respondent Union will admit all the allegations contained in Paragraphs 2(a), (b), (d), and 3(a).

4) Respondent Union and Respondent Company will admit all the allegations contained in Paragraphs 2(e) and 3(b) with respect to all the parties in interest, except for: Eastchester Dairy, Maplegrove Dairy, Kuritzky's Dairy Inc., Smith's Dairy, Inc., Sunnybrae Frams, L.H. Brooks, Fitchett Brothers, Fitchett Brenner, and Fitchett Emmadine Dairy Inc.

5) (a) The Metropolitan Milk Industry collective bargaining agreement effective November 30, 1971 to November 30, 1973, shall be admitted into evidence as GC 3.

(b) It is further stipulated that said agreement has been maintained in effect and enforced between Respondent Union and the following Employers:

1) Dairylea Cooperative Inc., the Respondent herein.

2) The following parties in interest herein:

a) Borden's Inc. (Stamford, Connecticut)

b) Crowley's Milk Company Inc., (Millwood, N.Y.)

c) Dellwood Dairy Co. Inc. (Yonkers, N.Y.)

d) Dellwood Dairy Co. Inc. (White Plains, N.Y.)

e) Eastchester Dairy (Tuckahoe, N.Y.)

f) Maplegrove Dairy (NYack, N.Y.)

g) Kuritzky's Dairy Inc. (Peekskill, N.Y.)

h) Smith's Dairy Inc. (White Plains, N.Y.)

i) Sunnybrae Farms (Mount Vernon, N.Y.)

j) L. H. Brooks (Millwood, N.Y.)

6) The Mid-Hudson Milk Industry collective bargaining agreement effective December 15, 1971 to December 15, 1973, shall be admitted into evidence as GC 4, as the agreement being maintained in effect and being enforced between Respondent Union and the following Employers in interest herein:

1) Fitchett Brothers (Poughkeepsie, N.Y.)

2) Fitchett Emmadine Dairy Inc. (Poughkeepsie, N.Y.)

3) Fitchett Brenner, Inc. (Poughkeepsie, N.Y.)

4) Dairylea (Poughkeepsie, N.Y.)

7) The collective bargaining agreement being maintained in effect and being enforced between Respondent Union and Dairylea Cooperative Inc., Goshen, New York (Party in Interest) shall be admitted into evidence as GC 5.

8) The collective bargaining agreement being maintained in effect and being enforced between Respondent Union and Deltown Foods, Inc., Fraser, New York (Party in Interest) shall be admitted into evidence as GC 6.

9) The collective bargaining agreement being maintained in effect and being enforced between Respondent Union and Dairylea Cooperative, Inc., Binghamton, New York (Party in Interest) shall be admitted into evidence as GC 7.

10) The collective bargaining agreement being maintained in effect and being enforced between Respondent Union and Crowley's Milk Co. Inc., Binghamton, New York (Party in Interest) shall be admitted into evidence as GC 8.

11) The collective bargaining agreement being maintained in effect and being enforced between Respondent Union and Crowley's Milk Co. Inc., La Fargeville, New York (Party in Interest) shall be admitted into evidence as GC 9.

12) The Respondent Company's Nanuet Sales Seniority List of the unit employees involved herein shall be admitted into evidence as GC 10. The

dates listed on GC 10 are recognized by the Union and the Company as the seniority dates of the employees listed thereon and include, where applicable, service with other employers in the industry for those employees taken over by the Company.

13) Rosengrant was appointed steward at Nanuet on or about December 13, 1972, by the appropriate Respondent Union officials having such authority.

14) (a) The bid of H. Rosengrant for wholesale route No. 10 and the notice of said bid shall be admitted into evidence as GC 11(a).

(b) The bid of Peter J. Daniels for wholesale route No. 10 shall be admitted into evidence as GC 11(b).

(c) The bid of N. Lafasciano for wholesale route No. 10 shall be admitted into evidence as GC 11(c).

(d) The bid of Bert Streifer for wholesale route No. 10 shall be admitted into evidence as GC 11(d).

(e) The bid of Harry Quigley for wholesale route No. 10 shall be admitted into evidence as GC 11(e).

(f) The bid of V. Shadoian for wholesale route No. 10 shall be admitted into evidence as GC 11(f).

(g) The bid of Robert Rush for wholesale route No. 10 shall be admitted into evidence as GC 11(g).

15) On or about December 27, 1972, the Respondent Company posted a notice of bid for wholesale route No. 10 (GC 11(a)). Thereafter seven bids were submitted by the following employees: Howard Rosengrant (retail routeman on route No. 12) GC 11(a); Peter J. Daniels (wholesale routeman on route No. 15) GC 11(b); N. Lafasciano (retail routeman on route No. 11) GC 11(c); Bert Streifer (wholesale routeman on route No. 4) GC 11(d); Harry Quigley (route rider) GC 11(e); V. Shadoian (retail routeman on route No. 14) GC 11(f); and Robert Rush (route rider) GC 11(g).

16) Rosengrant was awarded route No. 10 on or about January 10, 1973, following submission of the bids referred to in paragraphs 14 and 15 herein. But for the fact that Rosengrant, as steward, was accorded a higher seniority ranking by the contract (GC 3) than other employees who bid, he would not have been awarded route No. 10.

17) At the present time all the seven bidders, except for Rosengrant, and Rush who was the successful bidder effective October 1, 1973, on a new wholesale route, still occupy the positions that they had at the time of the bidding.

18) It is further stipulated that Respondent Union and Respondent Company, have accorded to Howard Rosengrant, as steward at the Nanuet plant, the benefits that he is entitled to under the collective bargaining agreement (GC 3), including those benefits specially reserved for the steward.

19) With respect to paragraph 5 of the Consolidated Complaint, the duties and responsibilities of Rosengrant, as steward, are set forth in, but not limited to, pages 5 and 6 of GC 3.

20) (a) On December 1, 1971, telegrams were sent to the places of employment of the employees covered by the Local 338 Metropolitan Milk Industry Collective Bargaining Agreement, advising that a ratification meeting for a new agreement effective as of November 30, 1971 would be held at 8:00 P.M. on December 2, 1971 at Carpenters Hall, 1 Hall Place, White Plains, New York. Said telegrams were sent in care of the respective shop stewards to be posted by the stewards at the various places of employment.

(b) One of said telegrams was posted on December 1, 1971 on the bulletin board at the Dairylea Nanuet facility located in the area where employees came daily to pick up their route books, and remained posted on the bulletin board through 8:00 P.M. on December 2, 1971.

(c) The aforementioned ratification meeting was convened at Car-

penters Hall at 8:15 P.M. on December 2, 1971 and resulted in ratification of the agreement admitted into evidence as GC 3.

GC 4 was submitted to and ratified by the members of the Union employed by the employers named in paragraph 6 herein.

GC 6 was submitted to and ratified by the members of the Union employed by Deltown Foods, Inc., Fraser, New York.

GC 7 and GC 8 were submitted to and ratified by the members of the Union employed by Dairylea Cooperative, Inc., Binghamton, New York, and Crowley's Milk Co., Inc., Binghamton, New York.

GC 9 was submitted to and ratified by the members of the Union employed by Crowley's Milk Co., Inc., La Fargeville, New York.

21) Local 338 has maintained collective bargaining agreements with the Company covering various locations in the geographic area defined in Exhibit GC 3 as the Metropolitan Area since prior to 1944. Beginning in or about 1947, Local 338 maintained collective bargaining agreements with Edwin C. Harring Dairy, West Nyack, New York. Beginning in or about 1956, Local 338 maintained collective bargaining agreements with Bauman Dairy, Nanuet, New York. The Company obtained the operations of Bauman subject to the aforesaid agreement in Nanuet, New York. The Company and Local 338 have continously since said time, maintained collective bargaining agreements covering said Nanuet facility. All of the aforesaid agreements have included provisions relating to shop stewards identical to those contained in Exhibit GC 3. Peter Daniels, who is currently employed at the Company's facility in Nanuet, New York, was, prior to such employment employed by Harring pursuant to the aforesaid agreements between Harring and Local 338.

22) The Company payroll records regarding the earnings of the seven bidders, since Rosengrant has been awarded wholesale route No. 10 (covering the period on or about January 10, 1973 through November 24, 1973), shall

be admitted into evidence as GC 12.

23) During the last week in November 1973 the employees of the Respondent Company involved herein, put in their requests for 1974 vacations. Rosengrant was afforded first choice on the basis of his super-seniority as steward in accordance with the contract (GC 3). But for this fact he would not have been afforded first choice.

24) Subsequent to the expiration of the collective bargaining agreements described above in paragraphs 5, 6, and 7, the parties described therein entered into renewal agreements which contain identical provisions as those in issue in this proceeding. At all times material herein said provisions are being maintained in effect and being enforced between the parties.

25) It is further stipulated that:

Dairylea in Woodside, New York is a branch of Dairylea and is engaged in the wholesale distribution of milk, and dairy products, orange juice and related products. During the past year Dairylea's gross annual revenues at Woodside exceeded $500,000 of which in excess of $50,000 was received from customers located outside the State of New York which were furnished to Dairylea within the State of New York.

It is further stipulated that:

During the past year Smith's Dairy Inc. received revenues of $60,000 from Dairylea in Woodside for providing for Dairylea, milk and/or dairy products at 19 school locations.

26) Fitchett Brothers, herein called F.B., Fitchett Emmandine Dairy Inc., herein Called F.E.I., Fitchett Brenner Inc., herein called F.B.I. and L.H. Brooks, herein called Brooks, are New York corporations engaged in the sale and distribution of milk and dairy products.

F.B., F.E.I., F.B.I. and Brooks are and at all times material herein have been affiliated businesses with common officers, ownership, directors and

operators, and constitute a single integrated business enterprise, the said directors and operators formulate and administer a common labor policy for the aforenamed companies, affecting the employees of said companies.

During the calendar year 1973 which period is representative of their annual operations generally F.B., F.E.I., F.B.I. and Brooks, in the course and conduct of their operations, derived gross revenues therefrom in excess of one million dollars. During the same period F.B., F.E.I., F.B.I. and Brooks in the course and conduct of their business, purchased and caused to be transported and delivered goods and materials valued in excess of $100,000 of which goods and materials valued in excess of $100,000 were transported and delivered to their facilities in New York State in interstate commerce directly from states of the United States other than the State in which they are located.

27) Kuritzky's Dairy, Inc. is a New York corporation engaged in the sale and distribution of milk, orange juice, cottage cheese and other milk products. During the calendar year 1973 which period is representative of its annual operations generally, Kuritzky's Dairy, Inc. in the course and conduct of its business operations sold and distributed products valued in excess of $300,000 of which products valued in excess of $50,000 were furnished to eight New York stores of Atlantic & Pacific Tea Company, which stores have a gross annual revenue in excess of $500,000 and which make annual purchases of goods directly from outside the State of New York in excess of $50,000.

28) Goodrich Milk Company is a New York corporation engaged in the sale of milk and milk products. During the calendar year 1973 which period is representative of its annual operations Goodrich Milk Company sold products in excess of $200,000, of which products valued in excess of $50,000 were furnished to among others, Reliable Market, a retail establishment located within the State of New York which has a gross annual revenue in excess of $500,000 and which makes annual purchases of goods directly from outside the State of

New York in excess of $50,000.

29) Sunnybrae Farms is a New York corporation engaged in the sale and distribution of milk and milk products. During the calendar year 1973 which period is representative of its annual operations generally, Sunnybrae Farms in the course and conduct of its business operations sold and distributed products valued in excess of $500,000 of which prdoucts valued in excess of $50,000 were furnished to, among others, the Board of Education of the City of New Rochelle, New York, which makes annual purchases of goods directly from outside the State of New York in excess of $50,000.

30) Eastchester Dairy Inc. is a New York corporation engaged in the sale and distribution of milk, orange juice, cottage cheese and other dairy products. During the calendar year 1973, which period is representative of its annual operations generally, Eastchester Dairy Inc., in the course and conduct of its business operations, sold and distributed products valued in excess of one million dollars, of which in excess of $500,000 was derived from its retail operation and in excess of $500,000 was derived from its wholesale operation. During the same period Eastchester Dairy purchased in excess of $15,000 of orange juice from Dellwood Dairy Co., located in the State of New York which enterprise had received said orange juice in interstate commerce directly from states of the United States other than the State in which it is located.

31) Prior to negotiation of the agreement admitted as GC 3 the employees covered by the then current Metropolitan Milk Industry Collective Bargaining Agreement were notified that Local 338 would receive suggested proposals for said negotiations. Various employees including five employees then employed at Dairylea's Nanuet facility submitted suggested proposals. None of the suggested proposals sought the elimination or modification of contract provisions relating to shop stewards, and no employees covered by the agree-

ments admitted as GC 4, 5, 6, 7, 8 and 9 requested the elimination or modification of provisions therein relating to shop stewards.

This stipulation shall be admitted into evidence as GC 2.

This stipulation is made without prejudice to any objection that any party may have as to the materiality or competency of any facts stated herein.

Dated at New York, New York
this 21st day of February, 1974.

/s/ Neil H. Deutsch, Associate Counsel
DAIRYLEA COOPERATIVE INC.
(Respondent Company)

Cohen, Weiss and Simon, attorneys
/s/ by Stanley M. Berman
MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Respondent Union)

/s/ Richard W. Rosen
RICHARD W. ROSEN, ESQ.
(Charging Party)

/s/ Lawrence A. Dinerstein
Lawrence A. Dinerstein
Counsel for the General Counsel

GENERAL COUNSEL'S EXHIBIT 3

COLLECTIVE BARGAINING AGREEMENT – LOCAL 338
METROPOLITAN MILK INDUSTRY

* * * * *

4. (a) Throughout the term of this agreement, all employees shall be required, as a condition of employment, to become members of the Union on and after thirty (30) days following the beginning of employment or the date of the execution of this Agreement whichever is later.

* * * * *

6. The general rules, seniority rules, vacation rules and details regarding the Pension and Welfare Program to be in effect during the term of this agreement are set forth in Schedules "B", "C", "D", "E", and "F", respectively, attached hereto and made a part hereof.

* * * * *

9. (a) There shall be a Steward or Stewards, but not more than one for each craft per shift, at every Delivery Branch, Pasteurizing Plant, and Garage to see whether the members of the Union and the Employer live up to the provisions of this agreement and the rules of the Union, not inconsistent with this agreement, and to report any infraction of such provisions and rules to the Superintendent who shall promptly correct them. Such Steward or Stewards shall be selected by the Union and each shall be an employee of the place in which he is Steward. There shall be no discrimination against Stewards for Union activities. The Steward shall have no authority to alter, amend, violate or otherwise change any part of this agreement. The Steward shall report to the Business Agent of the Union any violations of this agreement.

(b) The Steward shall be considered the Senior employee in the craft in which he is employed, and if there is more than one Steward, seniority, as between the Stewards shall be based on their Company seniority. The Superintendent or Branch Manager shall recognize the Steward as a representative of the Union locally, and shall inform him, prior to the laying off of employees, and of all union personnel changes. The Shop Steward shall bring to the attention of the Employer's representative, as provided in paragraph 9 (d) hereof any hardship on any employee. The Employer shall entertain no complaint involving an alleged breach of any provision of this agreement until the complaining party has given a written statement of such complaint to the Steward

or delegate.

(c) A shop steward who notifies management of his intended absence from work in the performance of his official duties during the calendar day preceding such absence shall have an absolute right so to absent himself. Failing to give such notice, a Shop Steward may absent himself from work only if he has received the permission of management or has arranged for his replacement by a qualified member of his craft. Management agrees that such permission shall be granted to Shop Stewards as a matter of course, save in emergencies or unless management cannot by the exercise of reasonable diligence provide adequate replacements.

(d) Any employee shall file any grievance he may have, in writing, with the Shop Steward within 3 days after the grievance has occurred. The case shall be presented to the Superintendent, Branch Manager, or Employer's representative in charge of the branch, in writing, whose answer shall be given, in writing within 3 days. If the Shop Steward and the Superintendent, Branch Manager, or Employer's representative cannot arrive at an adjustment of the grievance, the delegate shall be notified immediately and shall, within 3 days consult with the Shop Steward, Superintendent and the man or men involved and endeavor to adjust the matter. Appeals necessary on the grievances not adjusted locally shall be made by the delegate as follows:

(1) In the case of retail branches to the General Manager or operating head of the Division wherein the branch is located or to other Employer representatives. In the case of wholesale branches, to the Supervisor of Wholesale Sales, or other Employer representatives.

(2) In the case of Pasteurizing Plants or Garage to the Superintendent or Supervisor in charge, or to other Employer representatives.

(e) The Union and its representative shall have the right to originate a complaint in writing other than through an employee or Shop Steward and to

seek adjustment with the Employer in the manner provided in this provision.

Decisions on such grievances not adjusted locally shall be made within 5 days after they have been presented by the delegate.

* * * * *

SCHEDULE "B"

GENERAL RULES

* * * * *

37. Opportunities to work overtime shall be offered to employees in the order of their seniority within their respective crafts.

* * * * *

SCHEDULE "C"

SENIORITY RULES

I

WHOLESALE AND RETAIL BRANCHES

A. Craft Groups

Group 1 –Retail Foremen – Route Riders – Vacation Relief Riders – Routemen – Wholesale Foremen – Route Riders – Vacation Relief Riders – Routemen – Vending Retail Foremen – Vending Route Retail Riders – Vending Retail Vacation Relief Riders – Vending Retail Routemen – Vending Wholesale Foremen – Vending Wholesale Route Riders – Vending Vacation Relief Riders – Vending Wholesale Routemen.

Group 2 – Pasteurizing Foremen – Pasteurizers – Weighmasters and Testers – General Utility – Platform and Yard Foremen – Special Deliverymen – Plant Utility and Handymen – Car Washers – Porters.

Group 3 – Vending Machine Mechanics.

Group 4 – Refrigeration Mechanics – Plant Maintenance Mechanics – Refrigeration Mechanics Helpers.

Group 5 – Transportation Chauffeurs.

Group 6 – Automotive Mechanics – Mechanics Helpers.

Group 7 – Watchmen

B. Lay-offs

In all companies, the junior man (based on total length of service with the Employer in any capacity) in the craft group of the branch affected shall be laid off. Wherever a group consists of more than one craft there shall first be demotion in seniority order in all of the crafts of that group and the junior man in the lowest craft in that group shall be the one to be laid off. This rule shall not apply to temporary summer routes at seashore and country branches.

C. Bidding for Vacant Positions

1. *Vacant Route Rider's Section*

A vacant Route Rider's Section is to be publicly posted for no less than 72 hours and the senior Route Rider employed in the branch out of which such section operates shall have the first option on such section. If he declines, the next senior Route Rider in such branch shall have such option and so on. The bidding for such vacant section shall conclude the bidding and the section left vacant by the successful bidder is to go to the new Route Rider to be made in accordance with paragraph 2 below. If no bid is made for such vacant section by a route rider, the procedure set forth in Section 2 below shall be followed for the vacant section.

When any routes are transferred from branch to branch, Route Riders may exercise their craft seniority as to the selection of the branch, except where 65 percent or more of the routes in the rider's section are transferred.

Foremen not previously employed as riders shall have the privilege once only of bidding for a rider's job.

2. *Route Rider's Position*

A vacant Route Rider's position shall be publicly posted for no less than

72 hours and the senior qualified routeman employed in the branch in which such vacancy exists shall have the first option on such position. If he declines, the next senior qualified routeman shall have such option and so on.

3 *Routemen*

All new routes and all routes which become vacant are to be publicly posted for not less than 72 hours and the senior routeman employed in the branch out of which such route operates shall have the first option on such route. If he declines, the next senior routeman in such branch shall have such option and so on. The bidding for such vacant route shall conclude the bidding and the route left vacant by the successful bidder shall be assigned at the discretion of the Employer. Only one vacant route shall be posted at a time of any one vacancy; one change is permitted per year per man and craft seniority shall apply. This rule shall not apply to temporary summer routes at seashore and country branches. Bidding for changes within a craft shall not interfere with the bidding by a man out of his craft at any time. If a route accepted by a man through a bid is taken off within a year, the man shall have the right to exercise another bid. New employees in the industry, after receiving their first permanent job assignment, shall not be privileged to bid for one year from the date of such permanent assignment.

When a Senior Foreman or Route Rider desires to bid on a vacant route, he shall make application to the Shop Steward and the Employer's representative in charge of the branch out of which such route operates and where he is employed. If they approve his application he shall be privileged to bid, based on his seniority consisting of total length of service as Routeman, Route Rider, and Senior Foreman. Pending disposition of such application, the vacant route involved shall not be filled. In the event that a Route Rider or Foreman, who became such by his own bid, bids successfully for a route, he cannot thereafter bid back to his former category for a period of five years.

4. *Qualification for Bidding*

In the bidding for vacant position under subdivision 3, if the Employer and the Union agree that a man is not qualified for the position for which he bids, or in the absence of such agreement, if an arbitrator appointed pursuant to paragraph 15 determines that the man is not qualified the next senior man shall have the right to bid and so on.

5. *Vacation Relief Positions*

Positions of vacation relief men shall be posted for bid, and the senior bidder, if qualified in the branch where the position is available, shall have the first option on such position. If he declines or is not qualified, the next senior qualified routeman shall have such option and so on.

6. *Platform Position*

Utility men, if qualified, shall have the right to bid for vacant platform positions in the branch in which they are employed.

7. *Special Delivery*

Utility men, if qualified, shall have the right to bid for vacant special delivery positions in the branch in which they are employed.

8. *Bidding in Case of Lay-offs*

No route vacancy occurring in connection with a lay-off where a junior employee is to be replaced by a senior employee in the same branch or a senior employee is to be transferred to another branch to replace a junior employee shall be subject to bid.

9. *Time to Effect Bidding*

There shall be no more than a two weeks delay for each successive bump required between the conclusion of bidding and the placing into effect of the results thereof.

D. Days of Rest

1. *Routemen*

All days of rest in the route force created by vacancies shall be posted after such vacancy has been filled in accordance with Section C of Schedule C herein. The senior routeman in the section in which the day of rest occurs may select such a day of rest if he so desires. The remaining routemen employed in the section may move up after him in the order of their craft seniority, if they so desire.

2. *Inside Workers*

Seniority in the branch in crafts other than routemen shall prevail in the selection of day of rest.

II

PASTEURIZING PLANTS

A. Lay-offs

Lay-offs shall be confined to the plant affected.

When lay-offs are necessary in higher paid crafts, men in the higher paid crafts are first to be demoted in the plant affected to the General Utility craft on the basis of company seniority and the junior man in the General Utility craft in the plant affected shall displace the junior man in the same craft in the entire zone, or be laid off, as the case may be.

When lay-offs are necessary in the lower paid crafts, the senior qualified man in the craft, if senior to an employee in the higher paid craft in the plant affected, shall displace such higher paid employee who shall be the one to displace the junior man in the lower paid craft in the plant, which junior man is to be laid off or to displace the junior man in the zone, as the case may be; but a junior man who has been trained for a higher paid position because no senior man, who was qualified was willing to be trained, shall not be subject to lay-off unless the lay-off occurs within his craft.

B. Transfers

When Employer desires to transfer utility employees from one pasteuriz-

ing plant to another, senior employees shall have the preference but where no preference is expressed junior employee shall be affected.

C. Bidding for Vacant Positions

Vacancies in the position of Pasteurizers, Relief Pasteurizers, Weighmaster and Tester, shall be posted for 72 hours and shall be subject to bid. The senior bidder, if qualified in the plant in which the vacancy occurs, shall be given the vacant position. Senior men, if qualified, are to be trained to fill positions of specialists or pasteurizers, weighmasters or testers. If no qualified senior man is willing to train, Employer may train a qualified junior. Weighmasters, testers and pasteurizers shall be grouped together for seniority purposes.

D. Days of Rest

Craft seniority in each Pasteurizing Plant shall prevail in the selection of days of rest.

III

HEAVY DUTY TRANSPORTATION DEPARTMENT

A. Lay-offs

All lay-offs shall be confined to the branch affected.

B. Bidding for Vacant Positions

All runs now permanently established, shall, so long as they continue to be run, be secure to the chauffeurs operating them. Should any change the privilege of retaining their respective runs.

All new runs and all runs which become vacant shall be posted for 72 hours and shall be subject to bid by chauffeurs. The senior chauffeur in the branch where the vacancy occurs shall be given the vacant run if qualified. This shall conclude the bidding and the run then left vacant shall be assigned in accordance with existing rules and regulations.

C. Days of Rest

Craft seniority in each Transportation Branch shall prevail in the selection of days of rest.

IV

RETAIL AND WHOLESALE AUTOMOTIVE DIVISION

A. Lay-offs

Seniority shall prevail in all cases applying to demotion, vacation picks, and lay-offs, except that the man to be promoted must be qualified.

All lay-offs shall be made on the basis of company seniority.

In the case of a lay-off in a higher paid craft there shall first be demotion on the basis of seniority and the Junior man in the lowest paid craft shall be the one to displace the junior man in the entire zone or to be laid off, as the case may be.

B. Bidding for Vacant Positions

All bids shall be posted for 72 hours. The senior man in the same craft shall have the first option, and so on.

C. Transfers

Transfers shall be confined to junior employees unless senior employee desires to be transferred.

D. General

Mechanics now classed as heavy or light duty men shall have the right to bid into or out of either of these respective classes, if their seniority shall so permit, and if qualified for the shift.

Relief jobs are to be placed for bid. In the event no bids or an insufficient number of bids are received, junior employees at Central Repair Shops may be drafted for the vacancies.

Upon conclusion of relief duties a relief man shall return to his original position.

Mechanics helpers may bid for vacant mechanics positions if qualified.

V

CENTRAL REPAIR SHOPS

Lay-offs

All lay-offs shall be based on company seniority in the craft affected. In the case of a lay-off in a higher paid craft there shall first be demotion on the basis of seniority and the junior man in the lowest paid craft shall be laid off.

VI

GENERAL UTILITY

Vacancies in advanced positions, days off, and day or night shifts in the utility craft in branch, plant or garage shall be posted and subject to bid in the branch, plant or garage affected, by the senior utility man.

Permanent vacancies in the general utility craft shall be posted for bid among the entire utility force including those on all shifts. A temporary vacancy shall likewise be posted for bid among the entire general utility force as soon as it becomes apparent that the vacancy will last for more than seven days.

Seniority shall prevail with respect to any change of hours which is a change of over 2 hours within any particular operation in the plant.

VII

GENERAL RULES

A Discharge or Resignation

Discharge or resignation of any employee shall constitute a break in service. His seniority shall start anew upon re-employment.

B Re-Employment Lists

All employees laid off through no fault of their own by the Employer shall be placed on the over-all seniority list for re-employment in accordance with Section 4 (c) of this contract. Any such employee rehired by his own Employer within 2 years from the date of layoff shall be given continued

seniority for the total period employed.

C Promotions

In the event no bid is received for an open position, the vacancy must be posted for bid in the next lower craft. The Employer, however, may reject the bid of a man not qualified for the position.

D. Consolidations and Mergers

In all consolidations of branches or plants, company craft seniority for the purpose of lay-offs, is to be granted to the men and the provisions of Subdivision B, of Subdivision I, shall govern such lay-offs.

If the Employer acquires all or any part of a milk business or all or any part of a route in any milk business and merges or consolidates the same with its own business, or handles the same in any other manner, and if the employees of the business so taken over have been covered by the Local 338 Metropolitan Milk Industry Collective Bargaining Agreement for more than 6 months prior to the date of such acquisition, the Employer shall be required to assume responsibility for the employment of the said employees who shall enjoy craft seniority, on the basis of the period of employment in the business acquired for the purpose of layoffs, vacations, bidding, and in all other usual respects. The provisions of subdivision "B" hereof shall govern layoffs. Where the employees of the business so acquired have been covered by the Local 338 Metropolitan Milk Industry Collective Bargaining Agreement for less than 6 months, the question of seniority of the employees of the business to be acquired is to be agreed upon between the Union and the Employer, parties to this agreement.

In the event of layoff the junior man on the combined seniority list shall be the first to be laid off.

E. Withdrawal of Bids

Any employee refusing to accept an award after bidding, shall lose his

bidding rights for one year.

F. Temporary Employees

In the event of temporary vacancies resulting from illness or other emergencies, employees shall be selected from the appropriate unem- event that a permanent vacancy occurs at the branch at which they are employed during their employment at such location, they shall be privileged to exercise their seniority in competition with the regular employees of such branch for purposes of bidding for such permanent vacancy, subject to existing rules and regulations.

In the event that they are successful in so obtaining such permanent vacancies, they shall thereupon immediately be classified as permanent employees.

Any employee hired temporarily to take over the duties of another employee on such job shall be a temporary employee. Such temporary employment shall continue for the full temporary period and shall not affect seniority rating.

SCHEDULE "D"

VACATION RULES

* * * * *

4. Seniority lists together with vacation lists shall be posted in all plants, branches, garages, and warehouses at least two weeks before the start of vacations. Seniority in crafts in the plant, branch, garage, or warehouse shall prevail in the picking of vacation time.

* * * * *

17. Wholesale and retail vacation relief employees shall bid for their vacation during the vacation period designated by the Employer on the basis of their seniority in the craft.

* * * * *

GENERAL COUNSEL'S EXHIBIT 10

NANUET SALES SENIORITY LIST

Name	Date Employed
*H. Rosengrant	1 -7-69
P. Daniels	6 -44
R. Rush	5-27-55
B. Streifer	9-16-56
V. Shadoian	7 -1-57
N. Lafasciano	7- 6-58
H. Quigley	8-31-59
G. Ostrander	2- 4-60
D. King	2-25-60
F. Hartnagel	11-27-60
C. Havener	5-28-61
J. Dunne	9-17-61
P. Buday	9-9-62
G. Frisco	11-29-64
D. Conklin	4- 2-67
C. Siedlecki	10-13-69
J. Horn	6-19-72
J. St. Clair	7-13-72

*SHOP STEWARD

GENERAL COUNSEL'S EXHIBIT 11(a)

Dec 29 1972
time 1130 AM

Howard Rosengrant
Take my bid for
route 10.

Howard Rosengrant
Shop Steward

Route two
up for Bid
Day's off
Sat. & Sun
Give Bids to
Shop Steward

NATIONAL LABOR RELATIONS BOARD
GENERAL EXHIBIT No. GC 11a
Identified
Received
Disposition

GENERAL COUNSEL'S EXHIBIT 11(b)

Dec. 28, 1944

I Peter J. Daniels put in
my bid for Route #10 - 6-2-44.

Peter J. Daniels

GC 114

NATIONAL LABOR RELATIONS BOARD
Docket No. _____ OFFICIAL EXHIBIT NO. GC 11(b)
Disposition: Identified _____ Received ✓ Rejected _____
In the matter of _____
Date _____ Witness _____ Reporter _____
No. Pages

GC 11(b)

12 24

GENERAL COUNSEL'S EXHIBIT 11(c)

I Nicolo Laffasciano
Hereby Submit a Bid for Route 10

Nicolo Laffasciano
11 o'clock
Dec 27, 1972

GC 11c

NATIONAL LABOR RELATIONS BOARD
Docket No. _____ OFFICIAL EXHIBIT NO. _____
Disposition: Identified _____ Received _____ Rejected _____
In the matter of _____
Date _____ Witness _____ Reporter _____

GENERAL COUNSEL'S EXHIBIT 11(d)

12/27/72

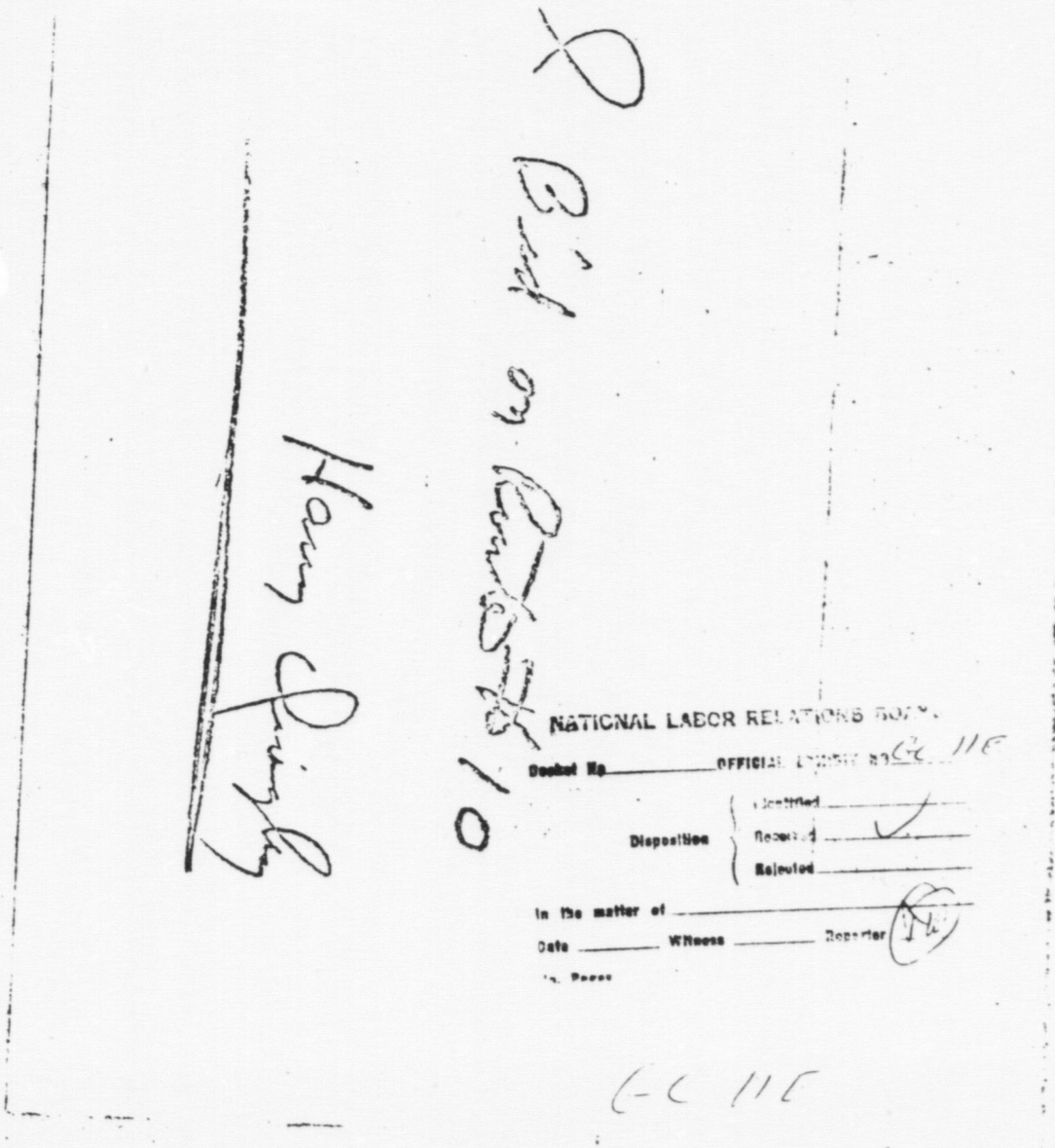
I Bid on
RT-10

Bert. Staffer

NATIONAL LABOR RELATIONS BOARD
Docket No. _____ OFFICIAL EXHIBIT NO. 11-D
Disposition: Identified _____ Received K Rejected _____
In the matter of _____
Date _____ Witness _____ Reporter _____
No. Pages

GC 11-D

GENERAL COUNSEL'S EXHIBIT 11(e)



GENERAL COUNSEL'S EXHIBIT 11(f)

DELIVERY ORDER

ROUTE | DATE | DRIVER ONLY (CHECK) Y NO

NAME	STREET AND NUMBER	ORDER
J. V. Sheldon	Rt. 1	Pick up
Route 5th 10.		V. Sheldon

NATIONAL LABOR RELATIONS BOARD
Docket No. OFFICIAL EXHIBIT NO. GC 11F
Identified
Received
Rejected
In the matter of
Date ____ Witness ____ Reporter
No. Pages

1352 (4/69) SLIPS MUST BE LEFT IN OFFICE DAILY

GENERAL COUNSEL'S EXHIBIT 11(g)

I had for Route #10
days Sat & Sun
Robert Rash

12/29/72

NATIONAL LABOR RELATIONS BOARD

Docket No. _____ OFFICIAL EXHIBIT NO. G.C. 11(g)

Disposition { Identified _____ / Received _____ / Rejected _____

In the matter of _____

Date _____ Witness _____ Reporter _____

No. Pages

G.C. 11(g)

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[16] BEFORE THE NATIONAL LABOR RELATIONS BOARD
Second Region

In the Matter of:	:	
DAIRYLEA COOPERATIVE, INC.,	:	
–and–	:	
RICHARD W. ROSEN,	:	
–and–	:	
MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA,	:	Case Nos.
	:	2-CA-12850
Party to the Contract	:	2-CB-5271
MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, (DAIRYLEA COOPERATIVE, INC.,)	:	
–and–	:	
RICHARD W. ROSEN,	:	
–and–	:	
BORDEN'S, INC., and various other employers, named in Appendix "A" attached hereto,	:	
Parties in interest.	:	

26 Federal Plaza,
New York, New York
Thursday, February 21, 1974

* * * * *

[24] JUDGE GOERLICH: On the record.

You may proceed, Mr. Dinerstein.

MR. DINERSTEIN: Your Honor, at this time I propose to offer into evidence as General Exhibit 2 a stipulation entered into by all of the parties.

This stipulation is to be considered in addition to the admissions in the answers by the parties, and should comprise most of the record.

It refers to certain exhibits which will be also put in.

JUDGE GOERLICH: Will you mark the exhibits? Do you want to read the stipulation into the record, or do you want to offer it in as an exhibit?

MR. DINERSTEIN: As an exhibit.

JUDGE GOERLICH: You may have it marked General Counsel Exhibit 2.

MR. DINERSTEIN: This is General Counsel's Exhibit 2.

(Document marked General Counsel Exhibit 2 for identification.)

JUDGE GOERLICH: Is there any objection to this exhibit, General Counsel Exhibit 2?

(No response.)

JUDGE GOERLICH: General Counsel's Exhibit 2 is admitted into

[25] evidence.

(Document marked General Counsel Exhibit 2 received into evidence.)

Do you have some exhibits that are referred to in the General Counsel Exhibit No. 2?

MR. DINERSTEIN: Yes.

JUDGE GOERLICH: You may have those marked.

MR. DINERSTEIN: Paragraph 5 of General Counsel 2 refers to the Metropolitan Milk Industry contract to be admitted into evidence as General Counsel's Exhibit 3.

JUDGE GOERLICH: Is there any objection?

(No response.)

JUDGE GOERLICH: There being no objections, it is admitted.

(Document referred to marked General Counsel Exhibit 3 and received into evidence.)

MR. DINERSTEIN: Paragraph 6 refers to the New York Metropolitan Milk industry contract. This contract is admitted into evidence as General Counsel Exhibit 4.

MR. BERMAN: May we go off the record?

JUDGE GOERLICH: Off the record.

(A discussion was held off the record.)

JUDGE GOERLICH: On the record.

MR. DINERSTEIN: Paragraph 6 refers to the Mid-Hudson Milk industry collective bargaining agreement.

[26] JUDGE GOERLICH: Is there any objection?

(No response.)

JUDGE GOERLICH: Hearing no objection, General Counsel Exhibit 4 is admitted.

(Document referred to marked General Counsel Exhibit 4 and received into evidence.)

MR. DINERSTEIN: Paragraph 7 refers to the Dairylea Cooperative, Inc., collective bargaining agreement, and that shall be admitted into evidence as General Counsel Exhibit 5.

JUDGE GOERLICH: Is there any objection?

(No response.)

JUDGE GOERLICH: Hearing no objections, Exhibit 5 is admitted.

(Document referred to was received in evidence as General Counsel's Exhibit 5.)

MR. BERMAN: Off the record.

JUDGE GOERLICH: Off the record.

(A discussion was held off the record.)

JUDGE GOERLICH: On the record.

MR. DINERSTEIN: It is noted for the record that General Counsel Exhibit 5 is the Dairylea Cooperative in Goshen, New York. This is the contract with Local 338.

Dairylea in Goshen, New York, is a party in interest.

Paragraph 8 refers to the Deltown Foods, Inc., Fraser, New York. It is a collective bargaining agreement, and that is General Counsel Exhibit 6.

[27] JUDGE GOERLICH: Any objections?

(No response.)

JUDGE GOERLICH: Hearing no objections, General Counsel's Exhibit 6 is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 6.)

MR. DINERSTEIN: Paragraph 9 refers to the Dairylea Cooperative, Inc., Binghamton, New York, collective bargaining agreement. That is admitted into evidence as General Counsel's Exhibit 7.

JUDGE GOERLICH: There being no objections, it is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 7.)

MR. DINERSTEIN: Paragraph 10 refers to Crowley's Milk Company, Inc., Binghamton, New York. That is a collective bargaining agreement, and it shall be admitted into evidence as General Counsel's Exhibit 8.

JUDGE GOERLICH: There being no objections, General Counsel Exhibit 8 is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 8.)

MR. DINERSTEIN: Paragraph 11 refers to Crowley's Milk Company, Inc., Forgeville, New York. That is a collective bargaining agreement, and it

[28] is to be admitted into evidence as General Counsel's Exhibit 9.

JUDGE GOERLICH: Hearing no objections, it is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 9.)

MR. DINERSTEIN: I want to note for the record that all these collective bargaining agreements and the copies submitted, I have put in paper clips and tried to indicate the pertinent descriptions to make it easier for the reader.

JUDGE GOERLICH: I take it you will give mention of that in your brief?

MR. DINERSTEIN: Yes.

JUDGE GOERLICH: The exhibit is admitted.

MR. BERMAN: May we go off the record?

JUDGE GOERLICH: Off the record.

(A discussion was held off the record.)

JUDGE GOERLICH: On the record.

MR. DINERSTEIN: The respondent company, in a net sale seniority list, referred to in Paragraph 12 of General Counsel Exhibit 2, shall be admitted into evidence as General Counsel Exhibit 10.

JUDGE GOERLICH: There being no objection, General Counsel Exhibit 10 is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 10.)

[29] MR. DINERSTEIN: Paragraph 14(a) refers to the bid of H. Rosengrant for wholesale Route No. 10, and the notice of said bid. Both of these are on one document, one paper. They should be admitted into evidence as General Counsel Exhibit 11-A.

JUDGE GOERLICH: Hearing no objection, General Counsel Exhibit 11-A is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 11-A.)

MR. DINERSTEIN: Paragraph 14(b) refers to the bid of Peter Daniels. That should be admitted into evidence as General Counsel's Exhibit 11-B.

JUDGE GOERLICH: Hearing no objections, General Counsel's Exhibit 11-B is received.

(Document referred to was received in evidence as General Counsel Exhibit 11-B.)

MR. DINERSTEIN: The bid of N. Lafasciano, mentioned in Paragraph 14(c), shall be admitted into evidence as General Counsel Exhibit 11-C.

JUDGE GOERLICH: Hearing no objections, 11-C is received.

(Document referred to was received in evidence as General Counsel Exhibit 11-C.)

MR. DINERSTEIN: The bid of Bert Streifer, mentioned in Paragraph 14(d), shall be admitted into evidence as General Counsel's Exhibit 11-D.

[30] JUDGE GOERLICH: Hearing no objections, General Counsel's Exhibit 11-D is received.

(Document referred to was received in evidence as General Counsel's Exhibit 11-D.)

MR. DINERSTEIN: The bid of Harry Quigley, mentioned in Paragraph 14(e), shall be admitted into evidence as General Counsel's Exhibit 11-E.

JUDGE GOERLICH: Hearing no objections, 11-E is received.

(Document referred to was received in evidence as General Counsel's Exhibit 11-E.)

MR. DINERSTEIN: The bid of V. Shadoian, mentioned in Paragraph 14(f), shall be admitted into evidence as General Counsel's Exhibit 11-F.

JUDGE GOERLICH: Hearing no objections, 11-F is admitted.

(Document referred to was received in evidence as General Counsel's Exhibit 11-F.)

MR. DINERSTEIN: The bid of Robert Rush, mentioned in Paragraph 14(g), shall be admitted into evidence as General Counsel Exhibit 11-G.

JUDGE GOERLICH: Hearing no objection, 11-G is admitted.

[31] (Document referred to was received in evidence as General Counsel Exhibit 11-G.)

MR. DINERSTEIN: The company payroll records, referred to in Paragraph 22, General Counsel Exhibit 2, shall be admitted into evidence as General Counsel Exhibit 12.

JUDGE GOERLICH: Hearing no objections, General Counsel Exhibit 12 is admitted.

(Document referred to was received in evidence as General Counsel Exhibit 12.)

MR. DINERSTEIN: Off the record.

JUDGE GOERLICH: Off the record.

(A discussion was held off the record.)

JUDGE GOERLICH: On the record.

MR. DINERSTEIN: Your Honor, I believe that completes the exhibits which were referred to in General Counsel Exhibit 2, the stipulation.

At this time, I would like to –

JUDGE GOERLICH: Do you have anything further by way of evidence, stipulations?

MR. DINERSTEIN: Yes.

JUDGE GOERLICH: You may offer whatever you have.

MR. DINERSTEIN: I would like to put into evidence a Dunn and Bradstreet Report on Saga Administrative Corporation. This refers to the Smith Dairy with regard to the commerce with Smith Dairy.

[32] JUDGE GOERLICH: Have you had it marked as an exhibit?

MR. DINERSTEIN: I would like this admitted into evidence as General Counsel Exhibit 13.

JUDGE GOERLICH: Hearing no objections, it may be admitted.

(Document referred to was received in evidence as General Counsel Exhibit 13.)

MR. BERMAN: I am not objecting so far as authenticity is concerned.

I would like to preserve my right on competency as I have reserved my rights in the large stipulation which will be admitted to in General Counsel Exhibit 2.

JUDGE GOERLICH: What you are saying is that you take the position that you set forth in the stipulation.

MR. BERMAN: General Counsel Exhibit 2 contains a saving clause at the end which all parties reserve the right to object to anything offered on the basis of materiality or competency.

I would like to be sure I reserve that same right to new matters that is outside of the general stipulation.

JUDGE GOERLICH: Very well.

MR. DINERSTEIN: Also, in regard to the Smith Dairy commerce, I offer into evidence as stipulation agreement which was entered into between Service Systems Corporation, one of the customers of the Smith Dairy, Inc., and in it there is a commerce fact stated and attested to by the attorney for
[33] the – I am sorry, the director of the operations for the company.

I would like to place this into evidence with regard to commerce, with regard to the commerce facts. This will be Exhibit 14.

JUDGE GOERLICH: Any objections?

MR. BERMAN: Same comment, your Honor, as I have with respect to No. 13.

JUDGE GOERLICH: Very well.

It may be admitted.

(Document referred to was received in evidence as General Counsel Exhibit 14.)

MR. DINERSTEIN: Your Honor, with regard to obtaining certain commerce information, with regard to the parties of interest, it is all contained – the facts are stated in General Counsel Exhibit 2, the stipulation.

One of the parties in interest has been uncooperative, and I believe the president, Mr. Greco, I was informed over the telephone, was ill. He had a heart attack. He wasn't available. There was no one to give me information.

Based on that, I do not want to go into subpoena enforcement.

The union has informed me today that some information regarding this company they have knowledge of and would be willing to put some sort of stipula-

[34] tion into the record with regard to the commerce of Maple Grove.

JUDGE GOERLICH: Have you framed such a stipulation?

MR. DINERSTEIN: Yes, sir. I can recite it into the record.

JUDGE GOERLICH: Very well. Recite it.

MR. DINERSTEIN: Maple Grove Dairy is located in Nyack, New York. It is engaged in the retail distribution of milk and milk products.

During the past year Maple Grove purchased and had transported from outside of New York State to its facilities in New York State, supplies and materials valued in excess of $50,000.

With regard to gross annual revenues of Maple Grove, the union does not know if the figure exceeds $500,000, but it is willing to stipulate that the gross annual revenues is in excess of $400,000.

JUDGE GOERLICH: That is in agreement with you, Mr. Berman?

MR. BERMAN: That is agreeable to us.

JUDGE GOERLICH: Mr. Deutsch?

MR. DEUTSCH: Yes.

JUDGE GOERLICH: Mr. Rosen?

MR. ROSEN: Yes.

MR. DINERSTEIN: That does it, your Honor.

[35] JUDGE GOERLICH: Does that conclude any evidence which the General Counsel is offering in this proceeding?

MR. DINERSTEIN: Yes, sir, your Honor.

JUDGE GOERLICH: I take it General Counsel rests at this point?

MR. DINERSTEIN: Correct, your Honor.

JUDGE GOERLICH: How about the charging party?

MR. ROSEN: At this time, the charging party rests.

JUDGE GOERLICH: How about the respondent, Dairylea Cooperative, Inc.?

MR. DEUTSCH: Respondent Dairylea rests.

JUDGE GOERLICH: The respondent Milk Drivers and Dairy Employees Local 338?

MR. DEUTSCH: We rest also, your Honor.

JUDGE GOERLICH: Very well.

MR. DINERSTEIN: Your Honor, the parties in this matter have agreed that there are no issues of credibility to be resolved. Accordingly, the parties have stipulated to waive the Administrative Law Judge's findings of fact, conclusions of law, and issuance of the Administrative Law Judge's decision.

The parties desire and stipulate that the record in this case be submitted to the Board for findings of fact, conclusions of law, and order from the Board.

JUDGE GOERLICH: Is that stipulation agreeable to you, Mr. Berman?

[36] MR. BERMAN: Yes.

JUDGE GOERLICH: Is it agreeable to you, Mr. Deutsch?

MR. DEUTSCH: Yes, it is.

JUDGE GOERLICH: Is it agreeable to you, Mr. Rosen?

MR. ROSEN: Yes.

JUDGE GOERLICH: Is it agreeable to you, Mr. Dinerstein?

MR. DINERSTEIN: Yes, your Honor.

JUDGE GOERLICH: The stipulation is admitted as part of the record.

MR. DINERSTEIN: Off the record.

(A discussion was held off the record.)

JUDGE GOERLICH: On the record.

MR. DINERSTEIN: In view of the fact that all matters have been stipulated to, there are no issues of credibility. I move that this matter be transferred directly to the Board.

JUDGE GOERLICH: Mr. Berman, are you joining such a motion?

MR. BERMAN: I do.

JUDGE GOERLICH: Mr. Rosen, do you join such a motion?

MR. ROSEN: I do.

JUDGE GOERLICH: Mr. Deutsch, do you join such a motion?

MR. DEUTSCH: Yes.

JUDGE GOERLICH: The motion is granted.

[37] The following order is entered in the transcript. Upon motion and agreement of all parties and there being no objections thereto, this matter is ordered directly transferred to the Board.

[August 30, 1974]

* * * * *

ORDER REMANDING FOR FURTHER HEARING

A hearing was held in this matter on November 26 and 27, 1973, and February 21, 1974, before Administrative Law Judge Lowell M. Goerlich. At the hearing the parties entered into a stipulation with respect to the facts and further, by stipulation, agreed to waive the Administrative Law Judge's findings of fact, conclusions of law, and the issuance of his decision and requested that the record in the case be submitted directly to the National Labor Relations

Board for its findings of fact, conclusions of law, and order. By order dated March 22, 1974, the proceeding was transferred to the Board. Thereafter the General Counsel and Respondent Union filed briefs with the Board.

The Respondent Union's contract with Respondent Dairylea and its similar contracts with the parties in interest provide in substance that the union steward, appointed by the Union, shall be considered the senior employee in his craft – i.e. shall have preference with respect to all contract benefits where seniority is the decisive consideration. The complaint alleges essentially that the Respondent Union by maintaining such a clause in its contracts has violated Section 8(b)(1)(A) and (2) of the Act and that Respondent Dairylea has violated Section 8(a)(3) and (1) of the Act. It also appears that the questioned super seniority clause in the contract between Respondent Union and Respondent Dairylea was applied so that on or about January 10, 1973, Howard Rosengrandt, a union steward, was awarded "wholesale route No. 10" which he would not have been awarded over the bids of others but for his super seniority derived from the disputed clause.

The General Counsel contends in effect that the maintenance and specific application of the clause are unlawful because they serve no legitimate interest of the Union with respect to carrying out its role as an effective collective-bargaining agent as is the case with those lawful super seniority clauses limiting their preference to layoff and recall.[1] However, the proffered stipulation is silent as to facts the Board believes relevant to the issues posed herein, particularly as to the intent and purpose of the parties in including the contested clauses in the contracts, as might be evidenced by facts as to the negotiating history thereof, as well as facts as to the intent and purpose of the parties with respect to the implementation of the clause as applied to Rosengrandt.

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[1] Citing in support of his position *Aeronautical Industrial District Lodge 727 v. Campbell et al.*, 337 U.S. 521 (1949).

Since such facts may be highly relevant to such considerations as whether there is or is not a legitimate union interest served by both the clause in general and its implementation, as well as considerations as to whether, conversely the clause was discriminatorily motivated and/or applied, the Board has concluded that it is necessary to remand this proceeding for further hearing before the Administrative Law Judge for the purpose of developing a full record as to the facts surrounding both the adoption and the implementation of the clause and on any other relevant facts necessary for a proper resolution of the issues in the case and for the purpose of issuance by the Administrative Law Judge of a decision on the issues in dispute.

Order

IT IS HEREBY ORDERED that the record in this proceeding be, and it hereby is, reopened, and that a further hearing be held before Administrative Law Judge Lowell M. Goerlich for the purpose of receiving additional evidence as specified above.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 2 for the purpose of arranging such further hearing, and that the said Regional Director be, and he hereby is, authorized to issue notice thereof.

IT IS FURTHER ORDERED that, upon the conclusion of the supplemental hearing, the Administrative Law Judge shall prepare and serve on the parties a decision therein containing findings of fact, conclusions of law, and recommendations concerning the issue in this proceeding, and that following the service of such supplemental decision upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.

Dated, Washington, D.C., August 30, 1974.

By direction of the Board:

George A. Leet
Associate Executive Secretary

GENERAL COUNSEL'S EXHIBIT 17

[Received November 20, 1974]

* * * * *

STIPULATION

Following the Board's remand order dated August 30, 1974, the parties hereby stipulate the following additional facts to supplement the stipulation dated February 21, 1974, and admitted into evidence as GC2 as follows:

32) Local 338 first negotiated collective-bargaining agreements in or about 1937.

33) Prior to such time Locals 584, 602 and 607 of the International Brotherhood of Teamsters, representing employees in the New York City Metropolitan Area, and Local 680 in the International Brotherhood of Teamsters, representing employees in Northern New Jersey, had jointly negotiated collective-bargaining agreements on a multi-employer basis with various employers in the dairy industry. Local 338 entered into and participated in such joint negotiations from the time of its first collective-bargaining negotiations until in or about 1960 when it withdrew from such joint negotiations.

34) At the time Local 338 entered into such joint negotiations, the collective-bargaining agreements which had previously been negotiated by various employers with Locals 584, 602 and 680 contained provisions identical to Section 9(a) and (b) of GC3.

35) There are no witnesses available who can testify concerning the negotiations described above in paragraph 33.

36) As a new participant in such joint negotiations, Local 338 adopted the form of agreement previously arrived at in such joint negotiations, including those provisions identical to Section 9(a) and (b) of GC3 without discussing these provisions. Following Local 338's withdrawal from such joint negotiations on or about 1960, it and the employers with which it bargained

continued in their agreements those provisions identical to Section 9(a) and (b) of GC3 without discussion of these provisions.

37) During the history of Local 338's collective-bargaining, no proposals have been made for elimination or modification of Section 9(a) and (b) of GC3 or of identical provisions in other collective-bargaining agreements maintained by Local 338.

38) David Hopper was the Local 338 shop steward appointed by Dairylea's Nanuet facility continuously from the time Dairylea obtained said facility until on or about December 13, 1972.

39) At a general membership meeting of Local 338 held in the month of November 1972, Hopper advised officials of Local 338 of his intention to resign as shop steward and recommended that Rosengrant be appointed his successor, which recommendation was accepted. By letter dated December 11, 1972, Hopper formally notified Local 338 of his resignation as steward effective December 13, 1972.

40) Sometime in January 1973 Local 338 sent a letter to Dairylea Cooperative, Inc., which was posted on the employees' bulletin board at the Nanuet New York facility indicating that Rosengrant was appointed temporary shop steward. Thereafter, during January 1973 certain employees protested Rosengrant's appointment to Local 338's Business Agent, Luke Kennedy, and attempted to have him replaced. However, Respondent Local 338 did not replace Rosengrant, and in fact he became and remains as the permanent shop steward.

41) Prior to his appointment as steward, Rosengrant had, at Hopper's absence because of illness, attended a special steward's meeting held on or about September 30, 1971, for the purpose of formulating proposals for the negotiations which preceded the making of GC3.

42) There is no further evidence which is capable of being adduced by the parties pursuant to the Board's Order dated August 30, 1974 concerning

the intent and purpose of the parties in including Sections 9(a) and (b) of GC3, and the facts as to the intent and purpose of the parties with respect to the implementation of the clauses, as applied to Rosengrant other than that set forth herein and in the Stipulation dated February 21, 1974 and admitted into evidence as GC2.

Dated at New York, New York
this 8th day of November 1974

/s/ signature illegible Attorney
Dairylea Cooperative, Inc.
(Respondent Company)

/s/ Richard W. Rosen, Esq.
Richard W. Rosen, Esq.
(Charging Party)

/s/ Stanley M. Berman, Attorney
Milk Drivers & Dairy Employees,
Local 338, International Brotherhood
of Teamsters, Chauffeurs, Warehouse-
men and Helpers of America
(Respondent Union)

/s/ Irwin M. Portnoy, Esq.
Irwin M. Portnoy, Esq.
(Counsel for the General Counsel)

[January 16, 1975]

* * * * *

ORDER

On August 30, 1974, the National Labor Relations Board issued an Order Remanding for Further Hearing in the above-entitled proceeding for the purpose of receiving certain additional evidence.

Thereafter, on November 18, 1974, the parties entered into a Stipulation in which they stipulated to additional facts to supplement the stipulated dated February 21, 1974, admitted into evidence as General Counsel's Exhibit 2. They agreed that there are no issues of fact to be resolved and that there is no further evidence to be adduced at a hearing. By letter dated November 18, 1974, the General Counsel submitted the Stipulation to Administrative Law Judge Lowell Goerlich, and moved that the Stipulation be accepted into evidence as General Counsel's Exhibit 17. The parties requested that a time be set for the filing of briefs. By Motion dated December 6, 1974, filed with the Administrative Law Judge, the Respondent Union moved that the matter be transferred directly to the Board. As there were no objections thereto, the Administrative Law Judge, by Order dated December 9, 1974, granted the motion and transferred the matter directly to the Board.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the General Counsel's motion be, and it hereby is, granted, and the Stipulation dated November 18, 1974, is hereby entered into evidence as General Counsel's Exhibit 17.

IT IS FURTHER ORDERED that the Board's Order Remanding for Further Hearing dated August 30, 1974, be, and it hereby is, vacated.

The parties herein may file briefs with the Board in Washington, D.C., on or before January 30, 1975.

Dated, Washington, D.C., January 16, 1975.

By direction of the Board:

George A. Leet
George A. Leet
Associate Executive Secretary

[July 29, 1975]

* * * * *

DECISION AND ORDER

Upon charges filed on January 9, 1973,[1] by Richard W. Rosen, an individual, the Regional Director for Region 2 of the National Labor Relations Board, acting on behalf of the General Counsel of the Board, issued a consolidated complaint on September 19, 1973, amended on September 26, alleging, *inter alia,* that the Respojdent Company, Dairylea Cooperative Inc., violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*), and the Respondent Union, Milk Drivers & Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, violated Section 8(b)(2) and (1)(A) of the Act.[2] The Respondents filed answers to the complaint in which they admitted certain allegations of the complaint and denied others, including all those charging them with the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before Administrative Law Judge Lowell Goerlich on November 26 and 27, 1973, and on February 21, 1974. At the hearing certain exhibits were placed in evidence, but no witnesses testified.

However, the General Counsel and Respondents entered into a stipulation, placed into evidence as an exhibit, in which they agreed to certain amendments

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[1] An amended charge was filed in Case 2-CB-5271 on September 11, 1973.

[2] The Parties in Interest are listed in Appendix A attached hereto.

to the complaint and to Respondents' answers, and in which they agreed upon certain facts relevant to the issues in this proceeding. They also waived, by way of a record stipulation, findings of fact, conclusions of law, and issuance of a decision by the Administrative Law Judge, and agreed to submit the case directly to the Board. By order dated March 22, 1974, this proceeding was transferred to the Board. Thereafter, the General Counsel and Respondent Union filed briefs with the Board. By order dated August 30, 1974, the Board remanded the case for further hearing with respect to certain specified matters and for further consideration and issuance of a decision by Administrative Law Judge Goerlich. However, by order dated January 14, 1975, the case was returned to the Board upon the basis of a further stipulation and agreement of the parties waiving consideration by the Administrative Law Judge. Thereafter, the General Counsel and Respondent Union filed additional briefs with the Board.

The Board has considered the entire record in this case, including the parties' briefs, and makes the following findings and conclusions.

Findings of Fact

I. The Business of Respondent Company and Parties in Interest

The Respondent Company has been at times material a corporation organized under the laws of the State of New York engaged, *inter alia,* in the sale and distribution of milk with places of business at various locations in that State and in the States of New Jersey and Pennsylvania. During recent annual periods typical of its business, the Company has grossed annual revenues in excess of $500,000 in the State of New York, of which in excess of $50,000 was received from customers located outside the State. Also during such period, it purchased goods and materials valued in excess of $50,000, directly from firms located outside the State of New York, which were furnished to the Company within that State. Accordingly, we find that the

Respondent Company is engaged in commerce within the meaning of Section (2), (6), and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

The Parties in Interest, like Respondent Company, are engaged at various locations in the State of New York in the sale and distribution of milk and related products. The record shows that each of the Parties in Interest is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction with respect to their operations.

II. The Labor Organization

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The Respondent Company and Parties in Interest have recognized the Union as representing units of essentially all their milk processing and distribution employees and have entered into collective-bargaining agreements covering such units of their employees.[3] These agreements provide in part that union stewards be selected by the Union and that each steward must be an employee of the location at which he is a steward. The contracts further provide that:

> The steward shall be considered the Senior employee in the craft in which he is employed . . . .

It is in effect conceded by the Union that this clause gives the steward, regardless of his length of service, top seniority not only with respect to layoff and recall, but also with respect to all contractual benefits where seniority is a consideration. Thus, under these contracts the steward is, among other things, given preference in the assignment of overtime, in the selection of

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[3] There are seven bargaining agreements with the Respondent Union involved in this proceeding. They are listed with their signatories in the attached Appendix B.

vacation period, and in the assignment of driver routes and other positions, with the preference extending to the selection of shift, hours, and day off.

On or about December 13, 1972, Howard Rosengrandt, a route driver, was appointed a steward at Respondent Company's Nanuet, New York, facility which has, since around 1954, been covered by the Union's metropolitan area bargaining agreement. On December 27, Respondent Company posted at the Nanuet facility a notice of bid for wholesale route 10. Seven bids were submitted, including those of Rosengrandt and Peter J. Daniels. Rosengrandt was awarded the route; however, it is agreed that, but for Rosengrandt's super seniority as a steward, the route would have gone to Daniels, who was senior in length of employment. During the following 9-month period, Rosengrandt received an income of approximately $14,000 from his new route; Daniels received about $12,000 from his old route;[4] while the other bidders all received even less on their routes.

The complaint alleges that Respondent Union, by maintaining and enforcing the steward's super seniority clauses in its contracts with the Parties in Interest, violated Section 8(b)(1)(A) and (2) of the Act. It further alleges that the Respondent Company and Respondent Union, by maintaining and enforcing such clause and by applying it in awarding Rosengrandt route 10, violated, respectively, Section 8(a)(1) and (3) and 8(b)(1)(A) and (2) of the Act. In support of these claims, the General Counsel contends that, as the broad super seniority clause reserves top seniority for stewards whom the Union appoints, it thereby

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[4] The evidence does not specify that Rosengrandt's advantage resulted from the fact route 10 was inherently more lucrative than Daniels' old route. But, as Daniels was the more senior employee and as there is no evidence he was less competent than Rosengrandt, such an explanation for Rosengrandt's income advantage would seem the most plausible one. However, our decision in this proceeding turns on the seniority preference accorded union stewards in seeking certain employment benefits and not on whether such benefits once acquired can necessarily be described in some objective sense as superior to the benefits the steward had but for his seniority preference.

unlawfully encourages union activism and discriminates with respect to on-the-job benefits against employees who in the exercise of their rights under Section 7 of the Act prefer to refrain from such activity. The Union claims, however, that as seniority is a matter of contract – and here ratified by unit employees – there can be no violation irrespective of the purpose to be served by the seniority provision. It also contends there is no basis for finding the alleged violations "in the absence of a showing of union motive for the purpose of encouraging or discouraging union membership."

We agree with the position taken by the General Counsel. The clause here in question gives union stewards, only because they are union stewards, preference in securing a rather wide range of on-the-job benefits. This fact is not in dispute. Further, there is nothing a unit employee can do, apart from being selected a steward, to acquire such preference for himself. His actual seniority on the job avails him nothing against the steward's super seniority. Consequently, as the General Counsel argues, viewed realistically the only way a unit employee can gain such preference to on-the-job benefits is to be a good, enthusiastic unionist and thereby through such actions recommend himself to the union hierarchy for appointment to the office of steward. But our dissenting colleague claims that this conclusion is based on the unwarranted, unsupported assumption that the Union rewards "good" members by making them stewards and ignores merit and ability in selecting stewards upon whom, he points out, the Union's "own continued well being and future vitality depend." Of course, we make no assumption that the Union would appoint stewards without regard to their capability to do the job, and there is nothing in what we have said to suggest that we do. Also, the argument of the dissent seems to imply the obvious non sequitur that being an enthusiastic unionist is somehow incompatible with having the merit and ability to carry out successfully the job of steward. If we have made an unstated as-

sumption it is that the Union will select persons for steward who have the ability to perform the job effectively. But we add that the ability to perform effectively must include not only the technical capability, for example, to process a grievance but also a belief in and support for union policy and goals. Certainly in an area where "its own continued well being and future vitality" are at stake the Union will not turn for help to employees uninterested in its success, much less to those who are opposed to it. Consequently, if we are to deal with the real world of real – and we can add rational – union officers it is obvious that an employee must be a committed unionist if he is to have a chance to acquire the broad benefit preference provided by the super seniority clause. For him to refrain from union activities – as of course he has a right to do under the Act – would be to exclude himself from ever obtaining such preference. Furthermore, even if we were to concede – which we do not – that union activities play no part in the Union's selection of its stewards, they indisputably do play a decisive part in access to benefits under the clause. Thus, as in the situation here before us, an employee can be denied by his employer a job benefit he is otherwise fully entitled to solely on the ground he is not the union steward; while another employee receives that benefit he otherwise would not obtain solely because he is the union steward. Thus, even accepting the dissent's argument, participating in union activities – i.e., acting as a steward, an activity even employees with merit and ability are free to forego under Section 7 – is a necessary precondition to obtaining the benefit preference of the disputed clause. Consequently, there can be no question but that the super seniority clause ties job rights and benefits to union activities, a dependent relationship essentially at odds with the policy of the Act, which is to insulate the one from the other.[5]

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[5] See *Radio Officers' Union of the Commercial Telegraphers Union, AFL [A.H. Bull Steamship Co.] v. N.L.R.B.*, 347 U.S. 17 (1954); also *Scofield v. N.L.R.B.*, 394 U.S. 423 (1969).

In reaching the above conclusion, we are aware that it is well established that steward super seniority limited to layoff and recall is proper even though it, too, can be described as tying to some extent an on-the-job benefit to union status. The lawfulness of such restricted super seniority is, however, based on the ground that it furthers the effective administration of bargaining agreements on the plant level by encouraging the continued presence of the steward on the job. It thereby not only serves a legitimate statutory purpose but also redounds in its effects to the benefit of all unit employees.[6] Thus, super seniority for layoff and recall has a proper aim and such discrimination as it may create is simply an incidental side effect of a more general benefit accorded all employees. It has not, however, been established in this case or elsewhere that super seniority going beyond layoff and recall serves any aim other than the impermissible one of giving union stewards special economic or other on-the-job benefits solely because of their position in the Union. That is not to say, of course, that proper justification may not be forthcoming in some future case involving particular circumstances calling for steward super seniority with respect to terms and conditions of employment other than layoff and recall. Consequently, there is no occasion here for finding super seniority – even that going beyond layoff and recall – to be *per se* unlawful. The issue ultimately is one of justification. However, in view of the inherent tendency of super seniority clauses to discriminate against employees for union-related reasons, and thereby to restrain and coerce employees with respect to the exercise of their rights protected by Section 7 of the Act, we do find that super seniority clauses which are not on their face limited to layoff and recall are presumptively unlawful, and that the burden of

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[6] See *Aeronautical Industrial District Lodge 727 v. Campbell et al.*, 337 U.S. 521 (1949). Though that case did not involve the National Labor Relations Act, the relevance of the Court's reasoning therein to proceedings under the Act has been recognized by this Board. See, e.g., *Bethlehem Steel Co. (Shipbuilding Division)*, 136 NLRB 1500, 1503 (1962).

rebutting that presumption (i.e., establishing justification) rests on the shoulders of the party asserting their legality.

Our dissenting colleague contends, however, that it is "clearly lawful" for an employer and a union "to recognize or encourage service as a steward" and "to achieve that result by means of a seniority system." He refers to the *Campbell* case, cited above, to support his position.[7] What we believe the dissent is saying here[8] is that an employer and a recognized union can encourage service as a steward through use of the seniority system. This we categorically deny and there is nothing in the *Campbell* decision, including the passage quoted in the dissent, to support such a conclusion.

Campbell was not concerned with the affirmative use of a seniority system for any purpose whatsoever, much less the specific one of encouraging employees to be union stewards. Rather *Campbell* was concerned with an *exception* to the seniority rule, an exception which could be created only through a labor-management agreement and which was found proper not because it is permissible for management and labor to encourage employees to be stewards but because, as we pointed out above, the exception by keeping stewards on the job worked to the benefit of *all* unit employees and furthered – in our context here – the collective-bargaining policies of the Act. In other words, *Campbell* sanctioned a certain privilege granted stewards because it was neces-

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[7] The dissent also refers to *Ford Motor Co. v. Huffman,* 345 U.S. 330 (1953). In that case the union had negotiated a seniority clause that counted time in military service towards on-the-job seniority. The Court found the clause lawful against claims that it improperly discriminated against nonveterans and amounted to a lack of fair representation with respect to them. In its decision the Court pointed out that a union does have wide discretion in negotiating seniority provisions to meet various contingencies. But neither in the examples of various permissible clauses or elsewhere does the Court suggest that a seniority clause can properly discriminate on the basis of union membership, office, or activity and no issue involving such discrimination was before the Court. *Huffman* is not, therefore, relevant to the issues before us.

[8] We are a bit puzzled by the use of "recognize" in the foregoing context. Surely an employer can "recognize" union stewards, but we really never thought about a union's recognizing

(continued)

sary for the proper carrying out of their responsibilities as stewards, which in turn were necessary in the application of agreements arrived at by collective bargaining. But there is not one word in *Campbell* about the legitimacy under any circumstances of giving stewards job benefits denied other employees for the purpose of encouraging employees to become and remain stewards.

We have no doubt but that stewards serve a useful purpose, but we would not describe their work as a "public service" as does the dissent. We recognize that the inconvenience and other disadvantages of being a steward may very well in some situations discourage employees from accepting the position, making it more difficult for a union to carry out its collective-bargaining responsibilities. Even so, it nevertheless remains the union's task to build and maintain its own organization, and where the immediate problem is simply a matter of encouraging employees to be stewards a union can alone handle the situation simply by paying employees or by giving them other nonjob benefits for work in such a capacity. But there is no necessity or justification in such circumstances for a labor-management agreement requiring that rank-and-file employees, whether or not they support the union, subsidize its stewards by surrendering to them certain job benefits or privileges in return for the steward's union activity.

In any event, there is nothing in the dissent to cause us to depart from our conclusions above that the disputed clause is presumptively unlawful and the burden is on the Union to rebut the presumption. However, the Union has not alleged, much less established, any justification for the broad reach of the super seniority clause in its various contracts with the Parties in Interest and the Respondent Company. In fact, as indicated above, Respondent Union claims

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[8] (continued)
its own stewards. Yet we can agree that it is lawful for a union to do so. However, no one is concerned here about recognition of union stewards. We are also a bit puzzled by the use of "that result" because it is really not clear what result "that result" refers to.

(erroneously we find) that, seniority being a matter of contract, it needs no justification.[9] For reasons set forth previously, we disagree. Because seniority affects conditions of employment there can be no real question but that it must conform to the requirements of the Act[10] – irrespective of its source in any agreement and even irrespective of the consent of those adversely affected. Consequently, we find that Respondent Union by maintaining and enforcing the steward super seniority clauses here in question has violated Section 8(b)(1)(A) and (2) of the Act, and that Respondent Company by maintaining and enforcing such clause in its contract with said Union has violated Section 8(a)(1) and (3) of the Act. Furthermore, by according Steward Rosengrandt super seniority under the disputed clause with respect to the December 27, 1972, bidding for driver route 10 and thereby awarding that route to Rosengrandt rather than Peter J. Daniels, who would have been awarded the route but for Rosengrandt's super seniority, Respondent Dairylea discriminated against Daniels and other employees in violation of Section 8(a)(3) and (1) of the Act, and Respondent Union thereby violated Section 8(b)(2) and (1)(A).

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[9] The purpose of the remand of this case mentioned above was, *inter alia,* to accord Respondent Union or any of the other parties a full opportunity to establish a proper justification for the super seniority clauses here under attack. Respondent Union made no attempt whatsoever to produce such justification but simply reiterated the position it had initially taken that no justification is necessary. Respondent Company and the Parties in Interest have taken no position on the legality of the clause.

[10] See *United Steelworkers of America, and its Local 1070, AFL-CIO (Columbia Steel & Shafting Company),* 171 NLRB 945, 946 (1968). We also find no merit in Respondent Union's argument that the clause cannot be found unlawful unless it is shown that the motive behind the clause was to encourage or discourage union membership. The argument suffers on several accounts. First, the discrimination proscribed by the Act is not limited to encouraging or discouraging union membership. Second, the forbidden motive or intent can properly be based, contrary also to a statement in the dissent, on the inherently discriminatory nature of the conduct – i.e., here the clause – in question where no legitimate purpose appears. See *Radio Officers' Union, supra,* at 41-42, 45; also *N.L.R.B. v. Erie Resistor Corp.,* 373 U.S. 221, 227-229 (1963). Third, as explained above, the clause also involves illegal restraint and coercion, a basis of illegality wholly separate from the issue of discrimination.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondents set forth above and occurring in connection with Respondent Company's operations and those of the Parties in Interest have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the steward super seniority clauses here in dispute are unlawful and we shall therefore order that Respondent Union cease and desist from maintaining and enforcing such clauses in its bargaining agreement with Respondent Company and in its agreements with the Parties in Interest. We shall also order that Respondent Company cease and desist from maintaining and enforcing such clause in its bargaining agreement with Respondent Union. We have also found that the unlawful super seniority clause was so applied as to deny Peter J. Daniels, on or about January 10, 1973, being awarded at Respondent Company's Nanuet establishment driver route 10 which he would have been awarded but for the illegal discrimination depriving him of top seniority. Consequently, we shall order that the Respondents jointly and severally make Daniels whole for any loss of earnings he may have sustained as a result of the discrimination against him. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). Also, in order to remedy fully the effects of the Respondents' unlawful conduct, we shall order that Respondent Company assign Daniels, if he so desires it, the driver route he would now hold but for

the unlawful granting of super seniority to union stewards, and that Respondent Union notify in writing both Respondent Company and Peter J. Daniels that it has no objection to assigning Daniels such route. Respondent Company's backpay obligation shall run from the effective date of the discrimination against Daniels to the time it makes such offer of a new route, while Respondent Union's obligation shall run from such effective date to the date of its notification to Respondent Company that it has no objection to such assignment to Daniels. Finally, we shall order that Respondent Company cease and desist in any like or related manner from interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, and that Respondent Union likewise cease and desist from restraining or coercing employees it represents exercising those same rights.

Conclusions of Law

1. Dairylea Cooperative Inc. and the Parties in Interest are engaged in commerce within the meaning of Section 2(6) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing a seniority clause in its collective-bargaining agreements with the Parties in Interest according union stewards super seniority for terms and conditions of employment not limited to layoff and recall, Respondent Union has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. By maintaining and enforcing a seniority clause in their collective-bargaining agreement according union stewards super seniority for terms and conditions of employment not limited to layoff and recall, Respondent Company and Respondent Union have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) and 8(b)(1)(A) and (2) of the Act, respectively, and by discriminating against Peter J. Daniels in

assigning super seniority to Union Steward Rosengrandt with respect to the award of driver route 10, the Respondents engaged in further violations of the foregoing section of the Act.

5. The foregoing unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Company, Dairylea Cooperative, Inc., Nanuet, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining and enforcing collective-bargaining provisions with Respondent Union, Milk Drivers & Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, according union stewards super seniority with respect to terms and conditions of employment other than layoff and recall.

(b) Discriminating against Peter J. Daniels or any other employee in assigning driver routes or any other term and condition of employment other than layoff and recall by according top seniority to union stewards in the assignment of such terms and conditions of employment where union stewards do not in fact have top seniority in terms of length of employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Respondent Union make Peter J. Daniels whole for any loss of earnings he may have suffered as a result of the discrimination against him, such earnings to be determined in the manner set forth

in the section of the Decision entitled "The Remedy," and offer Peter J. Daniels the driver route he would now have but for the unlawful assignment of super seniority to union stewards.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay and the route assignment due under the terms of this Order.

(c) Post at its establishment at Nanuet, New York, copies of the attached notices marked "Appendix C" and "Appendix D."[11] Copies of said notices, on forms provided by the Regional Director for Region 2, after being duly signed respectively by Respondent Company's and Respondent Union's representatives, shall be posted by the Respondent Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Company to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent Company has taken to comply herewith.

B. Respondent Union, Milk Drivers & Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives, shall:

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[11] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

1. Cease and desist from:

(a) Maintaining, enforcing, or otherwise giving effect to those clauses in its collective-bargaining agreements with Respondent Company, Dairylea Cooperative Inc. and the Parties in Interest named in Appendix A according union stewards super seniority with respect to terms and conditions of employment other than layoff and recall.

(b) Causing or attempting to cause Respondent Company and the aforesaid Parties in Interest to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing the employees of Respondent Company and of said Parties in Interest in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Respondent Company make Peter J. Daniels whole for any loss of earnings he may have suffered by reason of the discrimination against him, such lost earnings to be determined in the manner set forth in the section of the Decision entitled "The Remedy."

(b) Notify Respondent Company and Peter J. Daniels in writing that it has no objection to awarding Peter J. Daniels the driver route he would now have but for the unlawful assignment of super seniority to union stewards.

(c) Post at its office and meeting halls used by or frequented by its members and employees it represents at Respondent Company's Nanuet facility copies of the attached notices marked "Appendix C" and "Appendix D."[12] Copies of said notices, on forms provided by the Regional Director for Region 2 shall be posted by Respondent Union after being duly signed by Respondent

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[12] See fn. 11, *supra*.

Company's and Respondent Union's representatives, respectively, immediately upon receipt thereof. Post also at its offices and meeting halls and all other places where notices are posted for its members and employees it represents, who are employees of the aforesaid Parties in Interest, copies of the attached notice marked "Appendix E."[13] Copies of said notices on forms provided by the Regional Director, after being duly signed by Respondent Union's representative, shall be posted immediately upon receipt thereof. All the foregoing notices shall be maintained by Respondent Union for 60 consecutive days after posting in conspicuous places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by Respondent Union to insure that the notices are not altered, defaced, or covered by any other material.

(d) Mail to the Regional Director of Region 2 signed copies of attached notice marked "Appendix E" for posting by the Parties in Interest at their places of business where their employees are represented by Respondent Union and in places where notices to employees are customarily posted, if the Parties in Interest are willing to do so. Copies of said notice, on forms provided by the Regional Director, shall, after being duly signed by representatives of Respondent Union, be immediately returned to the Regional Director for such posting.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

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[13] See fn. 11, *supra*.

Dated, Washington, D.C., July 29, 1975.

Betty Southard Murphy, Chairman

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

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MEMBER FANNING, dissenting:

I cannot accept my colleagues' presumption that a collective-bargaining agreement distinguishing between the benefits received by union stewards and other employees in the unit the steward serves violates the Act. Since there is no other basis for finding the violations attributed to the Respondents, I would dismiss the complaint.

The precise origins and purpose of the agreement according superior seniority rights to stewards are unknown. For more than 30 years it was not questioned; no member of the unit suggested that it be changed or eliminated; and contracts containing the agreement were ratified regularly by the bargaining unit.

Evidence that stewards are selected on any basis other than ability is lacking and there is nothing to suggest that selection as a steward is a reward for supporting the Union. There is no evidence that any member of the unit has less than an equal opportunity to be selected as steward, or that there is, or ever has been, any invidious discrimination in the selection of stewards.

The only basis for finding the agreement and its application unlawful is the factually unsupported conclusion that the agreement marginally encourages union membership or support. But, to receive the advantage, the employee

must be a steward. He is already required to be a member under a lawful union-security clause.

It cannot be asserted – not with that confidence necessary to find an unfair labor practice – that the remote and contingent benefits associated with service as a steward have any significant impact on a member's election to support the Union. Although my colleagues assume that the Union rewards "good" members by making them stewards, there is no evidence to support that assumption. Lacking any evidence, it is unrealistic to assume that the Union values an easy and self-serving enthusiasm over merit and ability in selection for a post upon which its own continued well being and future vitality depend. Nor is there any evidence that the Union's members believe, or have any reason to believe, that the Union will reward "good" members in that manner.

To find a violation of the law when both the apparent purpose and effect of an act are lawful, it is not enough that there could be some hidden and unlawful purpose or possible unlawful effect. That hidden purpose must be bared, the likelihood of that conjectured effect proven. I believe that we can all agree that it is unjust and unreasonable to clothe outwardly lawful conduct with a semblance of illegality woven wholly from conjecture and supposition.

The only reasonable conclusion to be drawn from the evidence, or from reasonable inference, is that the agreement encourages or rewards service as a steward. That is the apparent and only clear effect of the agreement. Under familiar principles of law, that must also be presumed to be the Respondents' intention – there is evidence of no other. Yet it is clearly lawful for an employer and the collective-bargaining representative of its employees to recognize or encourage service as a steward. It is also lawful to achieve that result by means of a seniority system.

In a case arising from the Selective Training and Service Act of 1940,[14] the Supreme Court was asked to decide whether or not a collective-bargaining agreement giving union stewards superior rights to job retention was lawful if it deprived a veteran of his job. *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U.S. 521 (1949). In concluding that the agreement did not violate the Selective Service Act, the Court found its ultimate authority in the practices and traditions of collective bargaining:

> One of the safeguards insisted upon by unions for the effective functioning of collective bargaining is continuity in office for its shop stewards or union chairmen . . . . Because they are union chairmen they are not regarded as merely individual members of the union; they are in a special position in relation to collective bargaining for the benefit of the whole union. To retain them as such is not an encroachment on the seniority system but a due regard of union interests which embrace the system of seniority rights.
>
> These considerations are decisive of the case. The agreements . . . represent familiar developments in the process of collective bargaining which the Selective Service Act presupposes and in the context of which it must be placed. . . .
>
> . . . A labor agreement is a code for the government of an industrial enterprise and, like all government, ultimately depends for its effectiveness on the quality of enforcement of its code. Because a labor agreement assumes the proper adjustment of grievances at their source, the union chairmen play a very important role in the whole process of collective bargaining. There-

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[14] So far as is relevant here, the Selective Service Act protects the seniority rights of veterans upon their return after leaving their jobs to enter military service.

> fore it is deemed highly desirable that union chairmen have the authority and skill which are derived from continuity in office. A provision for the retention of union chairmen beyond the routine requirements of seniority is not at all uncommon and surely ought not be deemed arbitrary or discriminatory. [337 U.S. 521, 527-528.]

It is unrealistic, at least it is odd, to accord less weight to the practices of collective bargaining under the statute Congress designed to encourage it than in determining a similar issue under the Selective Service Act.

A provision encouraging service as a steward "surely ought not to be deemed arbitrary or discriminatory." That in the one case the loss of a steward would have resulted from a literal construction of "seniority" and an act of Congress – though the same might be said here – and not at the steward's choice is unimportant. A unit without a steward is nonetheless without a steward. That is a fact, and debating etiology is not likely to change it.

Establishing seniority on the basis of service on behalf of the unit – as recognition rather than encouragement – has also been sanctioned by the Supreme Court, and its exercise need not be limited to job retention.

> Seniority rules governing promotions, transfers, layoffs and similar matters may, in the first instance, revolve around length of competent service. Variations acceptable in the discretion of bargaining representatives, however, may well include differences based upon . . . time or labor devoted to related public service, whether civil or military, voluntary or involuntary. [*Ford Motor Co. v. Huffman,* 345 U.S. 331, 338-339.]

That service as a steward is "public service" in the context of the National Labor Relations Act is undeniable. Should doubt nonetheless exist,

it should be exercised by *Campbell, supra.* And it is difficult to discover "service" which can be related more directly to the interests of a bargaining unit than as steward in the selfsame unit.

The National Labor Relations Act expresses a public policy encouraging and fostering collective bargaining and, as part of that policy, comprehends encouraging or recognizing service as a steward. "Nothing in the National Labor Relations Act, as amended, so limits the vision and action of a bargaining representative that it must disregard public policy . . . ." *Huffman, supra* at 342. I see no reason why our vision should be more limited.

As there is no evidence of any discrimination in the selection of stewards, and no basis for concluding that measuring seniority, in the first instance, by service to the unit as steward violates the Act as a matter of law – precedent and logic both pointing in quite the opposite direction – there is a clear failure of proof of any violation of the Act.

I would dismiss the complaint.

Dated, Washington, D.C., July 29, 1975.

John H. Fanning, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Borden's Inc., 11 Brown House Road, Stamford, Conn. 06902

Crowley's Milk Company, Inc., 88 Millwood Road, Millwood, New York 10546

Dairymen's League Cooperative Assn., Inc., Nanuet, New York 10954

Dellwood Dairy Co., Inc., 170 Saw Mill River Road, Yonkers, New York 10701

Dellwood Dairy Co., Inc., 177 Lake Street, White Plains, N.Y. 10708

Eastchester Dairy, 210 Marbledale Road, Tuckhoe, N.Y. 10707

Maplegrove Dairy, 60 West Main St., Nyack, N.Y. 10960

Kuritzky's Dairy, Inc., Route 202, Peekskill, N.Y. 10566

Smith's Dairy, Inc., 4 Winchester St., White Plains, N.Y. 10708

Sunnybrae Farms, 37 Grove St., Mount Vernon, N.Y. 10550

L.H. Brooks, P.O. Box 244, Millwood, N.Y. 10546

Fitchett Brenner, Inc., Box 1089, Poughkeepsie, N.Y. 12601

Fitchett Emmandine Dairy, Inc., 152 W. Main St., Wappinger Falls, N.Y. 12590

Dairylea, P.O. Box 3353, Poughkeepsie, N.Y. 12603

Dairylea Cooperative Inc., Box 89 Goshen, N.Y. 10954

Crowley's Milk Co., Inc., 145 Conklin Avenue, Binghamton, N.Y. 13903

Crowley's Milk Co., Inc., LaFargeville, N.Y. 13656

APPENDIX B

The seven union bargaining agreements involved in this proceeding are:

1. The Metropolitan Milk Industry Agreement between the Union and Dairylea Cooperative Inc., the Respondent, and the following parties in interest:

Borden's Inc.

Crowley's Milk Company Inc.

Dellwood Dairy Co. Inc., Yonkers, N.Y.

Dellwood Dairy Co. Inc., White Plains, N.Y.

Eastchester Dairy

Maple Grove Dairy

Kuritzky's Dairy Inc.

Smith's Dairy Inc.

Sunnybrae Farms

L. H. Brooks

2. The Mid-Hudson Milk Industry Agreement between the Union and
   Fitchett Brothers
   Fitchett Emmandine Dairy, Inc.
   Fitchett Brenner, Inc.
   Dairylea, Poughkeepsie
3. An agreement between the Union and Dairylea, Goshen.
4. An agreement between the Union and Delton Foods, Inc.
5. An agreement between the Union and Dairylea Cooperative, Inc., Binghamton.
6. An agreement between the Union and Crowley's Milk Co., Binghamton.
7. An agreement between the Union and Crowley's Milk Co., LaFargeville.

The Metropolitan, Mid-Hudson, and Dairylea Goshen agreements, carried 1973 termination or automatic renewal dates; those for Dairylea, Binghamton, and Crowley's were 1974; and those for Deltown, 1976. However, it is stipulated that renewal agreements for those contracts expiring in 1973 had been entered into and at all times material the clause in dispute in this case maintained in full force and effect.

APPENDIX C

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT maintain and enforce any agreement with Milk Drivers & Dairy Employees, Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, giving union stewards top seniority no matter what their length of employment with respect to their selection

for and the assignment to them of contract benefits or other terms and conditions of employment except for layoff and recall.

WE WILL NOT discriminate against Peter J. Daniels or any other employee by assigning a driver route or any other term and condition of employment other than layoff and recall to a union steward on the basis of seniority when such union steward does not in fact have top seniority in terms of length of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL jointly and severally with the Union pay Peter J. Daniels any earnings he lost as a result of awarding driver routes to union stewards rather than to Daniels, when he had actual top seniority in terms of length of service, and WE WILL offer Peter J. Daniels the driver route he would now have but for the unlawful assignment of top seniority to union stewards.

DAIRYLEA COOPERATIVE INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 36th Floor, 26 Federal Plaza, New York, New York 10007, Telephone 212-264-0300.

APPENDIX D

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT maintain and enforce any agreement with Dairylea Cooperative Inc., Nanuet, New York, giving our stewards or other representatives top seniority no matter what their length of employment, with respect to their selection for, and assignment of, contract benefits or other terms and conditions of employment except for layoff and recall.

WE WILL NOT cause or seek to cause Dairylea Cooperative Inc. to discriminate against Peter J. Daniels, or any other employee, by assigning driver routes or any other term and condition of employment other than layoff and recall to a union steward on the basis of seniority when such steward does not in fact have top seniority in terms of length of employment.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL jointly and severally with Dairylea Cooperative Inc. pay Peter J. Daniels any earnings he lost as a result of awarding driver routes to union stewards rather than to Daniels when he had actual top seniority in terms of length of service and we will notify Dairylea Cooperative Inc. and Peter J. Daniels that we have no objection to its awarding Daniels the driver route he would now have but for the unlawful assignment of top seniority to union stewards.

MILK DRIVERS & DAIRY EMPLOYEES, LOCAL 338, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

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This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 36th Floor, 26 Federal Plaza, New York, New York 10007, Telephone 212-264-0300.

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APPENDIX E

NOTICE

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

To employees of Borden's Inc., Crowley's Milk Company, Inc., Dairymen's League Cooperative Assn., Inc., Dellwood Dairy Co., Inc. (Yonkers), Dellwood Dairy Co., Inc. (White Plains), Eastchester Dairy, Maplegrove Dairy, Kuritzky's Dairy, Inc., Smith's Dairy, Inc., Sunnybrae Farms, L. H. Brooks, Fitchett Brenner, Inc., Fitchett Emmandine Dairy, Inc., Dairylea, Dairylea Cooperative Inc., Crowley's Milk Co., Inc. (Binghamton), Crowley's Milk Co., Inc. (LaFargeville).

WE WILL NOT maintain and enforce any agreement with your employer giving our stewards or other representatives top seniority no matter what their length of employment with respect to their selection for, and assignment to them of, contract benefits or other terms and conditions of employment except for layoff and recall.

WE WILL NOT cause or seek to cause your employer to discriminate against any of its employees by assigning any term and condition of employment other than layoff and recall to a union steward on the basis of seniority when such steward does not in fact have top seniority in terms of length of employment.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights protected by Section 7 of the Act.

MILK DRIVERS & DAIRY EMPLOYEES,
LOCAL 338, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 36th Floor, 26 Federal Plaza, New York, New York 10007, Telephone 212—264—0300.